MONTANA LEGISLATIVE HISTORY

Chapter 96 19 15

Bill H 74 S 136 Original bill & history ___C

→ SB157

Joint Committee on Compensation

H. Committee on _____ S. Committee on _____

Hearing Date(s)			Hearing Date(s)		
	_____	___C		_____	___C
	_____	___C		_____	___C
	_____	___C		_____	___C
	_____	___C		_____	___C
Date Out	_____	___C			

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

Request of the Governor.

There is very little, if any real legislative history of this bill from the session. The Senate Journal has discussion on p395-397. MHS

The most information found quickly is from 1st Annual Rpt of Industrial Accident Board 1916. Copied section "Montana law compared with that of other states" p18-21. Volume at MHS

SENATE JOURNAL

OF THE

Fourteenth Legislative Assembly

OF THE

STATE OF MONTANA

Held at Helena, the Seat of Government of said State,
commencing January 4, 1915, and ending
March 4, 1915

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of same to certain documents, degrees, papers and instruments; defining the jurisdiction and authority of the Presidents of the several institutions composing the University of Montana, and repealing all Acts or parts of Acts in conflict with this Act," beg leave to submit the bill, without recommendation, and that it be placed on General File.

JUNOD, Chairman.

On motion of Junod, duly seconded, the foregoing reports were adopted.

The majority of the Committee on Public Morals submitted the following report on Senate Bill No. 135:

February 18, 1915.

Mr. President: We, a majority of your Committee on Public Morals, having had under consideration Senate Bill No. 135, introduced by Stevens, a bill for an Act entitled: "An Act to prevent pool selling, betting, or wagering of any money, or other valuable thing upon the result of any horse race, or other contest of speed, skill or endurance of any animals, and to prohibit any one from transferring, or transmitting any information for the purpose of having bets or wagers made, paid, recorded, reported or registered, and to make this Act apply to all races or contests held or conducted within this State, and to those races and contests held out of the State of Montana; and to provide for the punishment of those who violate the provisions of this Act," beg to report same back with the recommendation that it be indefinitely postponed.

MINOR, Chairman.
P. M. ABBOTT
O. G. WILLETT

Moved by Minor, seconded by Abbott, that the foregoing majority report be adopted.

A minority of the Committee on Public Morals submitted the following report on Senate Bill No. 135:

Helena, Montana, February 16, 1915.

Mr. President: We, a minority of your Committee on Public Morals, having had under consideration Senate Bill No. 135, introduced by Stevens, entitled: "An Act to prevent pool selling, betting, or wagering of any money or other valuable thing upon the result of any horse race, or other contest of speed, skill or endurance of any animals, and to prohibit any one from transferring, or transmitting any information for the purpose of having bets or wagers made, paid, recorded, reported or registered, and to make this Act apply to all races, or contests held, or conducted within this State, and to those races and contests held out of the State of Montana; and to provide for the punishment of those who violate the provisions of this Act," beg leave to report:

The purposes of this Bill are so evident and plain as to leave no room for doubt. The measure is intended to eradicate the evil known as race track gambling. For many years gambling in all forms save this one has been prohibited in this State, and we can see no legitimate reason for the continuance of a system of gambling, insidious in its character, under the promotion of race and fair associations.

If report be true, and it can scarcely be doubted, race track gambling, as conducted in Montana, brings within its grasp, and under its baneful influence, the youth and women of communities where conducted.

In the days of licenses gambling in Montana, when the gambling houses never closed their doors, the pioneers of Montana, careful of the surroundings of women, and watchful of the youth, prohibited the presence of women and minors in that character of places.

Under race track gambling, minors are permitted to become employees of the race and fair associations, to solicit bets, and are rapidly being educated to live a life unworthy of our best efforts.

Not alone are the youth being influnced, but the women are permitted to mingle around the betting ring, where the only result possible, is to lower and degrade.

The promoters of race meetings have failed to conduct their business in a manner to merit approval. Many of these evils could be eradicated by the managements. Their own negligent and short-sighted policy has made the race track gambling odious to all.

Gambling is not necessary to any test of speed, nor to the better breeding of animals, but if it is, it should be conducted free from licensed authority, and without the aid of those whose only interest is to live without labor.

To dwell upon the evils of race track gambling is to recite that which is within the knowledge of every Senator. No valid reason can be assigned why the State should, in any instance, become a partner, or in any event authorize this form of gambling to longer continue.

We, a minority of your Committtee, recommend that Senate Bill No. 135 do pass.

STEVENS.
FISHBECK.

Moved by Stevens, seconded by Fishbeck, as a Substitute Motion, that the foregoing Minority Report be adopted.

On request, a roll call vote was ordered on the adoption of the foregoing substitute motion of Senator Stevens, which was carried by the following vote:

Ayes: Annin, Brower, Brownlee, Burla, Burlingame, Cato, Clark, Darroch, Dwight, Edwards, Fishbeck, Galiwey, Grande, Haley Hogan, Junod, Kane, Kinney, Larson, MacKenzie, McCone, Meadors, Oliver, O'Shea, Parker, Roberts, Selway, Stevens, Taylor, Vagg,—30. Noes: Abbott, Byrnes, Minor, Muffly, Willett, Williams—6. Absent, not voting: Asbridge, Clay, Lane, Whiteside—4.

The Committee on Enrolled Bills submitted the following report:

February 18, 1915.

Mr. President: Your Committee, on Enrollment, beg leave to report that at the hour of 11:23 A. M., this day, we transmitted to His Excellency, the Governor, the enrolled copies of Substitute Senate Bill No. 61, and Senate Bill No. 57, and received the dated receipts of his private secretary thereof.

Respectfully,

O'SHEA, Chairman.

On motion of O'Shea, duly seconded, the foregoing report was adopted.

The Committee on Finance and Claims submitted the following report on Senate Bill No. 148:

February 18, 1915.

Mr. President: We, your Committee on Finance and Claims, to whom was referred Senate Bill No. 148, introduced by Byrnes, being a bill for an Act entitled: "An Act concerning the advertising for bids and the letting of contracts by State and County officers, boards and commissions; providing that public records and files thereof be made and kept, and that biennial reports of the letting of all state contracts, and the bids thereof, be made to the Legislative Assembly; prescribing penalties for the violation of the provisions of this Act; defining the term 'lowest responsible bidder', and repealing all Acts in conflict herewith," beg to report the same back to the Senate, with the recommendation that it be amended by inserting in line 14 of Section 5, after the words "Senate Committee on Finance and Claims", the words "or the House Committtee on Appropriations", making this sentence read: "Said reports shall be filed with the Senate Committee on Finance and Claims, or the House Committee on Appropriations for the use of all members of each House," and that bill, as amended, do pass.

SELWAY, Chairman.

On motion of Selway, duly seconded, the foregoing report was adopted.

The Joint Committtee on Compensation submitted the following report:

Helena, Montana, February 17, 1915.

To The Senate and House of Representatives: We, your Committee, to whom was referred all compensation laws introduced in this Fourteenth Legislative Assembly, respectfully beg leave to report as follows:

After extended hearings, at which the representatives of employers and employees of the State expressed their views to the Committtee on this important subject, we are prepared to set forth the reasons which determine our final action on the subject.

The primary question submitted to us for determination was whether the law which should meet our approval would be elective or compulsory. It was argued with much force on behalf of the advocates of the compulsory system that such a law would be more uniform in operation, more far reaching in its protection of injured workmen, and more just to those employers who sought to be fair with their

employees, than any other system of compensation which we might adopt. We concede the force of all these arguments, but we are constrained to admit that there is a grave doubt as to the constitutionality of any compulsory law. It was forcefully argued before our Committee that the laboring people of Montana, who are perhaps more interested than any other class in the operation of the law, were willing to take all the chances on the question of the law's constitutionaltity.

We can not support that line of reasoning. First, because we are not legislating in the interest of one class of people alone, and, secondly, because such a statement on the part of the representatives of labor is not wholly supported by the facts. We believe that the last thing that an injured workman, or his dependants, should desire is uncertain or doubtful compensation which might be swept away, and leave them divested of all rights by a decision of the Supreme Court of the United States.

That there is a difference in the opinions of courts and eminent lawyers upon this subject is conceded by all, and in view of that fact, we believe that we would not be justified in adopting any measure concerning the validity of which such a known doubt exists. For these reasons, and no other, we have endorsed the elective form of compensation, believing that such a law will be in effect compulsory, as no prudent employer can afford to refrain from availing himself of the provisions of this Act. With his common law and statutory defenses removed, it would indeed, be hazardous, for any employer, operating in any of the hazardous occupations, to stand out from under the operation of the law; even if he should do so, his employees still enjoy much greater rights than they do under the existing system, for in case of injury, such an employer could scarcely escape responsibility to the injured workman, or his dependents. Under the present law, such an employer will escape liability in a large percentage of the cases of injury through availing himself of the defenses of assumption of risk, fellow servant doctrine, or contributory negligence, but under the law which we propose, these defenses will all be taken away from him. Farther than this, no legislative enactment can go without clearly contravening the Fourteenth Amendment of the Federal Constitution.

The second question which we were called upon to determine was the schedule of compensation which should prevail in the proposed bill. That we found to be a difficult problem; naturally, there was a wide divergence of opinion among the people who appeared before us at the public hearing. The representatives of labor contended for a higher schedule of compensation, while the employer contended for a more moderate schedule.

In the consideration of this subject, we were not unmindful of the fact that the whole subject of compensation laws is in its infancy, and that it would be well to proceed in this manner with some degree of caution. No compensation schedule which this Assembly can adopt, will ever reimburse the mained and injured employee for his pain and suffering, and loss, and in common with all right thinking people, we regret our inability to endorse a schedule that would be approved by our sympathies rather than our reason. However, if we take into consideration the available statistics showing the percentage of accidents in industries and calculate therefrom the sums of money to become due under any of the proposed compensation laws, the stupendous totals of such compensation when reckoned over a period of years will suggest to the most enthusiastic advocate of liberal compensation, the necessity of a degree of caution.

In making any comparison between the drain on industries due to accidents under existing conditions, and under the operations of a compensation law, it should be bourne in mind that under the present system relatively very few accidents are ultimately charged against the employer, and even though he is sometimes held liable for a large sum in damages, the average, by comparison with any suggested schedule of compensation is very low. In addition to this, under a system of compensation, all accidents extending over a greater period than two weeks will be charged against the employer, and those of lesser duration will also be a charge upon him for medical and surgical services. In practical operation, under the present condition, the employee who is slightly injured makes no claim for his injuries, and suffers his loss, including loss of wages, in silence, believing that a claim for damages might jeopardize his future employment. Under a compensation

law, that condition no longer prevails, and the statistics of those states which have a compensation law show a surprising percentage of all the cost of compensation law is paid for the lesser injuries. We think the employees of this State, or at least their representatives before this Joint Committee, failed to give this fact the consideration to which it is entitled.

A third factor which we took into consideration in arriving at our decision is the necessity for legislation that will be so complete and specific in its terms as to leave as little as possible to the determination of any court proceedings. We are fully convinced that both the employes and the employer want to know as nearly as possible their exact rights under any legislation which we adopt.

On deliberate consideration of all of the foregoing factors, we unqualifiedly endorse to you Substitute for Senate Bill Number 74, and House Bill Number 136, by Hogan and Eliel, the basis of which is Senate Bill No. 74, with amendments taken in substance from House Bill number 136, increasing death benefits, from three hundred and fifty to four hundred weeks, thereby adding Five Hundred Dollars to the maximum, and also compensation in cases of permanent or total disability which provided for payments for four hundred weeks, by adding Five Dollars per week for the remainder of life.

At the request of the railway employees, and with the approval of the representatives of railroads, we have substituted for Section 17 (e) the following:

"Section 17 (e). The provisions of this Act shall not apply to any railroads engaged in interstate commerce, except that railroad construction work shall be included in, and subject to the provisions of this Act."

We take the liberty of suggesting to the members of this Assembly, and through you to the people of Montana, that this vitally important subject should receive the careful consideration of all of our citizenship, and that no spirit of ill will, or animosity should enter into either the public or private discussion of this enactment. In order to be most efficiently administered, after its enactment, it should have the vigorous hearty moral support of the entire community, leaving to the future such modifications and improvements as increasing knowledge will later suggest. It is one of the mighty factors that ought to lead to industrial peace, a condition greatly to be desired by every good citizen. To accomplish that result, however, we should be impartial and dispassionate in our consideration of the subject, and neither the employer, nor the employee should have any public encouragement in any effort to discredit whatever may prove to be the final judgment of this legislative assembly.

The people of the State of Montana expect of this Assembly the enactment of a compensation law. We will be derelict in our duty if we fail to enact such a measure. The proposed law is necessarily of great length, and any amendments would have to be considered in their relation to the provisions of the entire act, and their proper consideration would require considerable time, and perhaps the recommitment of the bill to a Committee; such a course might imperil the final enactment of the law.

We, therefore, strongly urge that the bill as approved by your Committee, be adopted without amendment.

Respectfully submitted,

LARSON.
PHILLIPS.

On motion of Larson, duly seconded, the foregoing report was adopted.

Moved by Larson, duly seconded, that the Printing Committee be instructed to cause to have printed 1,000 copies of Senate Bill No. 157 (Substitute for Senate Bill No. 74 and House Bill No. 136), introduced by Hogan and Eliel, a bill for an Act entitled:

"An Act providing for the protection and safety of workmen in all places of employment, and for the inspection and regulation of places of employment in all inherently hazardous works and occupations; providing a schedule of compensation for injury to, or death of workmen, and methods of paying the same, and prescribing the liability of employers who do not elect to pay such compensation; establishing the Industrial Accident Board; defining its powers and duties, and providing for a review of its awards," and that Senate Bill No. 157 be given right-of-way over all other Bills. Motion carried.

STATE LAW LIBRARY
Justice Building
215 N. Sanders
Helena, Montana 59620

1915

SUPPLEMENT

TO

THE REVISED CODES OF MONTANA

OF 1907

CONTAINING ALL LAWS OF A GENERAL CHARACTER ENACTED SINCE THE TENTH LEGISLATIVE ASSEMBLY AND NOW IN FORCE

AND

ANNOTATING ALL CONSTITUTIONAL, CODE, AND STATUTORY PROVISIONS CITED BY THE SUPREME COURT SUBSEQUENT TO 1907

COMPILED AND ANNOTATED

BY

PETER V. ROSS
Of the San Francisco Bar
Author of "Inheritance Taxation," "Probate Law and Practice," etc.

SAN FRANCISCO
BANCROFT-WHITNEY COMPANY
1916

WORKMEN'S COMPENSATION ACT.

Chapter 96, Laws 1915, page 168.

"An act providing for the protection and safety of workmen in all places of employment and for the inspection and regulation of places of employment in all inherently hazardous works and occupations; providing a schedule of compensation for injury to or death of workmen and methods of paying the same, and prescribing the liability of employers who do not elect to pay such compensation; establishing the industrial accident board, defining its powers and duties; and providing for a review of its awards."

Be it enacted by the Legislative Assembly of the State of Montana:

PART I.

GENERAL PROVISIONS.

Name of Act—What Each Part to Contain.

Section 1. (a) This act shall be known and may be cited as the Workmen's Compensation Act. Part I shall contain those sections which have a general application to the whole of the act and may be referred to as the "General Provisions"; Part II shall contain those sections which refer to Compensation Plan No. 1; Part III shall contain those sections which refer to Compensation Plan No. 2; Part IV shall contain those sections which refer to Compensation Plan No. 3; Part V shall contain those sections which may be referred to as the "Safety Provisions."

References to Plan Numbers.

Section 1. (b) Whenever Compensation Plans Nos. 1, 2, or 3, or the safety provisions of this act shall be referred to, such reference shall also be held to include all other sections which are applicable to the subject matter of such reference.

References to "Compensation Provisions."

Section 1. (c) The "Compensation Provisions" of this act, whenever referred to, shall be held to include the provisions of Compensation Plans Nos. 1, 2, or 3, and all other sections of this act applicable to the same, or any part thereof.

Industrial Accident Board—Term of Office—Salary—Treasurer—Vacancies.

Section 2. (a) There is hereby created a board to consist of three members; the Commissioner of Labor and Industry shall be one member, the State Auditor shall be one member, and one member shall be appointed by the Governor, which board shall be known as the Industrial Accident Board, and shall have the powers, duties, and functions hereinafter conferred. The term of office of the appointed member of the board shall be for four years and until his successor shall have been appointed and qualified. He shall receive an annual salary of four thousand dollars, payable monthly, and shall be the chairman of the board. The board shall elect one of their number as treasurer of the board.

Removal of Appointive Member.

Section 2. (b) A vacancy in the office of the appointed member of the board shall be filled in the same manner as the original appointment, but

shall only be for the unexpired term of such vacancy. The appointed member shall not be removed except for cause, and after a hearing had before and a finding, made by the remaining members of the board, and both of the remaining members of the board must concur in the removal of the appointed member.

Official Bonds.

Section 2. (c) Each member shall, upon entering upon the duties of his office, execute to the state of Montana and file with the Secretary of State a bond in the sum herein prescribed, executed by not less than four responsible sureties or by some surety company authorized to become sole surety on bonds in the state of Montana, such bond to be approved by the Governor, and conditioned that he will faithfully and impartially discharge the duties of his office. Such bonds shall be in addition to any other bonds required by law to be furnished.

Treasurer's Bond—Bond of Other Members.

Section 2. (d) The bond of the treasurer of the board shall be in a sum to be fixed by the Governor, not less than twenty-five thousand dollars ($25,000), nor more than one hundred thousand dollars ($100,000). The bonds of the members of board other than the treasurer shall be in the sum of ten thousand dollars ($10,000).

Compensation to Ex-officio Members.

Section 2. (e) Neither the Commissioner of Labor and Industry, nor the State Auditor, shall receive any additional compensation for the duties imposed upon them by this act.

Quorum—Powers in Case of Vacancy—Hearings—Findings and Orders.

Section 2. (f) A majority of the board shall constitute a quorum for the transaction of any business. A vacancy on the board shall not impair the right of the remaining members to perform all of the duties and exercise all the powers and authority of the board. The act of the majority of the board when in session as a board shall be deemed to be the act of the board, but any investigation, inquiry, or hearing which the board has power to undertake or to hold, may be undertaken or held by, or before, any member thereof, or any examiner, or referee appointed by the board for that purpose. Every finding, order, decision, or award made by any commissioner, examiner, or referee pursuant to such investigation, inquiry or hearing, when approved and confirmed by the board and ordered filed in its office shall be deemed to be the finding, order, decision, or award of the board.

Seal of Board.

Section 2. (g) The board shall have a seal bearing the following inscription: "Industrial Accident Board, State of Montana, Seal." The seal shall be affixed to all writs and authentications of copies of records, and to such other instruments as the board shall direct. All courts shall take judicial notice of said seal.

Office and Furnishings—Temporary Quarters.

Section 2. (h) The board shall keep its principal office in the capital of the state and shall be provided with suitable rooms, necessary office furniture, stationery, and other supplies. For the purpose of holding sessions in other places the board shall have power to rent temporary quarters.

Secretary—Appointment, Term, Duties—Records.

Section 2. (i) The board shall appoint a secretary who shall hold office at the pleasure of the board. It shall be the duty of the secretary to keep a full and true record of all the proceedings of the board; to issue all necessary processes, writs, warrants, and notices which the board is required or authorized to issue, and generally to perform such other duties as the board may prescribe.

Other Assistants and Employees.

Section 2. (j) The board shall employ such assistants and other employees as it may deem necessary to carry out the provisions of this act.

Compensation of Officers and Employees—Terms of Office and Duties.

Section 2. (k) All officers and employees of the board shall receive such compensation for their services as may be fixed by the board, shall hold office at the pleasure of the board, shall perform such duties as are imposed on them by law or by the board.

Salaries Monthly—Approval and Auditing.

Section 2. (l) The salaries of members of the board, secretary and every other person holding office or employment under the board, as fixed by law or by the board, shall be paid monthly after being approved by the board upon claims therefor to be audited and approved by the State Board of Examiners.

Expenses to be Paid from What Fund.

Section 2. (m) All expenses incurred by the board pursuant to the provisions of this act, including the actual and necessary traveling and other expenses and disbursements of the members thereof, its officers and employees incurred while on business of the board, either within or without the state, shall, unless otherwise provided in this act, be paid from the Industrial Administration Fund, after being approved by the board upon claims therefor to be audited and approved by the State Board of Examiners.

Blank Forms, Minutes and Records.

Section 2. (n) The board shall cause to be printed such blank forms as it shall deem requisite to facilitate or promote the efficient administration of this act. It shall provide a book in which shall be entered the minutes of all its proceedings, a book of record in which shall be recorded all awards made by the board, and such other books, or records as it shall deem requisite for the purpose and efficient administration of this act. All such records are to be kept in the office of the board.

Reports and Bulletins Which may be Published.

Section 2. (o) The board shall have the power and authority to publish and distribute at its discretion from time to time, in addition to its annual report, such further reports, and bulletins covering its operations, proceedings, and matters relative to its work as it may deem advisable.

Fees.

Section 2. (p) The board shall have power and authority to charge and collect the following fees:

Copies of Papers and Records.

1. For copies of papers and records not required to be certified or otherwise authenticated by the board, 15 cents for each folio; for certified copies of official documents and orders filed in its office, or of the evidence taken at any hearing, 20 cents for each folio.

Charges for Publications.

2. To fix and collect reasonable charges for publications issued under its authority.

Fees to be Paid into What Fund.

3. The fees charged and collected under this section shall be paid monthly into the treasury of the state to the credit of the Industrial Administration Fund, and shall be accompanied by a detailed statement thereof.

Attorney General Legal Adviser of Board.

Section 2. (q) The Attorney General shall be the legal adviser of the board and shall represent it in all proceedings whenever so requested by the board or any member thereof.

Defenses Excluded in Personal Injury Action—Negligence of Employee—Fellow-servant—Assumption of Risk.

Section 3. (a) In an action to recover damages for personal injuries sustained by an employee in the course of his employment, or for death resulting from personal injuries so sustained, it shall not be a defense; (1) That the employee was negligent, unless such negligence was willful; (2) That the injury was caused by the negligence of a fellow-employee; (3) That the employee had assumed the risks inherent in, incident to, or arising out of his employment, or arising from the failure of the employer to provide and maintain a reasonably safe place to work, or reasonably safe tools, or appliances.

Provisions not to Apply to Domestic Servants, Farm Laborers, etc.

Section 3. (b) The provisions of section 3 (a) shall not apply to actions to recover damages for personal injuries sustained by household or domestic servants, farm or other laborers, engaged in agricultural pursuits, or persons whose employment is of a casual nature.

Employers not Liable for Death or Injury Other Than Herein Defined—Employees Who Elect not to Come Under Act.

Section 3. (c) Any employer who elects to pay compensation as provided in this act shall not be subject to the provisions of section 3 (a), nor shall such employer be subject to any other liability whatsoever for the death of, or personal injury to any employee except as in this act provided; and, except as specifically provided in this act, all causes of action, actions at law, suits in equity, and proceedings whatever, and all statutory and common-law rights and remedies for, and on account of such death of, or personal injury to, any such employee are hereby abolished; provided, that section 3 (a) shall not apply to actions brought by an employee who has elected not to come under this act, or by his representatives, for damages for personal injuries, or death, against an employer who has elected to come under this act.

Provisions of Act to be Exclusive in What Cases.

Section 3. (d) Where both the employer and employee have elected to come under this act, the provisions of this act shall be exclusive, and such election shall be held to be a surrender by such employer and such employee of their right to any other method, form, or kind of compensation, or determination thereof, or to any other compensation, or kind of determination thereof, or cause of action, action at law, suit in equity, or statutory or common-law right, or remedy, or proceeding whatever, for, or on account of, any personal injury to, or death of such employee, except as such rights may be hereinafter specifically granted; and such election shall bind the employee himself and in case of death shall bind his personal representative and all persons having any right or claim to compensation for his injury, or death, as well as the employer, and those conducting his business during liquidation, bankruptcy, or insolvency.

Compensation Plan No. 3 Exclusive, etc., When a Public Corporation or Its Contractor is the Employer—Duty of Governing Body of Corporations.

Section 3. (e) Where a public corporation is the employer, or any contractor engaged in the performance of contract work for such public corporation, the terms, conditions and provisions of Compensation Plan No. 3 shall be exclusive, compulsory, and obligatory upon both employer and employee. Any sums necessary to be paid under the provisions of this act by any public corporation shall be considered to be ordinary and necessary expenses of such corporation, and the governing body of such public corporation shall make appropriation of and pay such sums into the accident or administration fund, as the case may be, at the times and in the manner provided for in this act, notwithstanding that such governing body may have failed to anticipate such ordinary and necessary expense in any budget, estimate of expenses, appropriation, ordinance, or otherwise.

Employers Engaged in Hazardous Industries—Election.

Section 3. (f) Every employer engaged in the industries, works, occupations, or employments in this act specified as "hazardous" may on or before the 1st day of July, 1915, if such employer be then engaged in such hazardous industry, work, occupation, or employment, or at any time thereafter, or, if such employer be not so engaged on said date, may on or after thirty days before entering upon such hazardous work, occupation, or employment, or at any time thereafter, elect whether he will be bound by either of the compensation plans mentioned in this act. Such election shall be in the form prescribed by the board, and shall state whether such employer shall be bound by Compensation Plan No. 1, or Compensation Plan No. 2, or Compensation Plan No. 3, and a notice of such election, with the nature thereof, shall be posted in a conspicuous place in the place of business of such employer, and a copy of such notice, together with an affidavit of such posting, shall be filed with the board.

Employee Engaged in Hazardous Occupation Bound by What Plan—Election.

Section 3. (g) Every employee in the industries, works, occupations or employments in this act specified as "hazardous" shall become subject to and be bound by the provisions of that plan of compensation which shall have been adopted by his employer, unless such employee shall elect not to be bound by any of the compensation provisions of this act and until

such employee shall have made such election. Such election shall be made by written notice in the form prescribed by the board, served upon the employer, and a copy filed with the board, together with the proof of such service.

Presumption When Employer Fails to Make Election — Election Binds Employer Until What Time.

Section 3. (h) If the employer shall fail to make the election herein provided for, at the time, and in the manner herein prescribed, such employer shall be presumed to have elected not to be bound by the provisions of either Compensation Plan No. 1, or Compensation Plan No. 2, or Compensation Plan No. 3 for that fiscal year, unless such employer shall elect to become subject to, or bound by this act in the manner provided for such election in the first instance. After having once elected to be bound by one or the other of the compensation plans provided in this act, such employer shall be bound by such election for said first fiscal year and each succeeding fiscal year, unless such employer shall, not less than thirty or more than sixty days prior to the end of any fiscal year, elect not to be bound by either of such compensation plans, after the expiration of said fiscal year or unless he shall elect to be bound for the succeeding fiscal year by a different compensation plan than the one by which he is then governed. Such election must be made in the manner provided for in reference to the first election of such employer under this act.

Employer Shall Make Election Before Being Bound—Employee Presumed to Have Elected.

Section 3. (i) It is the intention of this act that any employer engaged in hazardous occupations as defined herein shall, before being bound by either of the compensation plans herein provided, elect to be so bound thereby, and that the employee shall be presumed to have elected to be subject to, and bound by, the provisions of the particular plan which may have been adopted by his employer, unless such employee shall affirmatively elect not to be bound by this act.

Election at Any Time.

Section 3. (j) Any employee who has elected not to be bound by the provisions of this act in the manner herein provided, may revoke such election and elect to come thereunder at any time. Any employer who has failed to elect to be bound by either one or the other of the compensation plans herein mentioned, may, at any time during any fiscal year, elect to be bound thereby, which said election shall be made as hereinbefore provided; but whenever any employer or employee shall have elected to come under the provisions hereof, such election, when it shall have been made, shall bind such employer and employee for the rest of the then fiscal year.

Compensation When Employer has not Elected.

Section 3. (k) No compensation shall be paid to any employee, whether such employee has elected to come under this act or not, where his employer has failed to elect, and has failed to come under one or the other of the compensation plans herein provided.

Act Applies to All Inherently Hazardous Occupations as Enumerated.

Section 4. (a) This act is intended to apply to all inherently hazardous works and occupations within this state, and it is the intention to em-

brace all thereof in sections 4 (b), 4 (c), 4 (d), and 4 (e), and the works and occupations enumerated in said sections are hereby declared to be hazardous.

Construction Work.

Section 4. (b) Tunnels, bridges, trestles; subaqueous works, ditches and canals (other than irrigation without blasting), dock excavations, fire-escapes, sewers, house-moving, house-wrecking, iron or steel frame structures or parts of structures, electric light, or power plants, or systems, telegraph or telephone systems; pile-driving, steam railroads, steeples, towers or grain elevators, not metal framed; drydocks, without excavation; jetties, breakwaters, chimneys, marine railways, waterworks or water systems; electric railways, cable railways, street railways, with or without rock work or blasting; erecting fireproof doors or shutters; steam-heating plants; blasting; tanks, water-towers or windmills, not metal framed; shaft-sinking; concrete buildings; freight or passenger elevators; fireproofing of buildings; galvanized iron or tin works; gas works or systems; marble, stone or brick work; roadmaking, with or without blasting; roof work; safe moving; slate work; plumbing work, inside or outside; metal smokestacks or chimneys; excavations not otherwise specified; blast furnaces; street or other grading; advertising signs; ornamental work on buildings; ship or boat building or rigging, with or without scaffolding; carpenter work not otherwise specified; installation of steam boilers or engines; placing wires in conduits; installing dynamos; putting up belts for machinery; marble, mantel, stone or tile setting; metal ceiling work; mill or ship wrighting; painting of buildings or structures; installation of automatic sprinklers; concrete laying in floors, foundations or street paving; asphalt laying; covering steam-pipes or boilers; installation of machinery not otherwise specified; drilling wells, installing electrical apparatus or fire-alarm apparatus in buildings; house-heating or ventilating systems, glass setting; building hothouses; lathing, paper-hanging, plastering, wooden stair building.

Section 4. (c) Operation (including repair work) of logging, cable, electric, street, steam or other railroads; dredges; interurban electric railroads using third-rail systems; electric light or power plants; quarries; telegraph systems; stone-crushers; blast furnaces; smelters; coal mines, gas-works; steamboats; tugs and ferries, mines other than coal; steam-heating or power plants; grain elevators; laundries; waterworks, paper-mills; pulp-mills; garbage and fertilizer works.

Factories Using Power-driving Machinery.

Section 4. (d) Stamping tin metal; bridge work; railroad, car or locomotive making or repairing; cooperage; logging, with or without machinery; sawmills, shingle-mills, staves, veneer, box, lath, packing cases, sash, doors, blinds, barrel, keg, pail, basket, tub, woodenware or wooden fibreware, rolling-mills; making steam shovels or dredges; tanks, water-towers, asphalt; building material not otherwise specified; fertilizer; cement, stone with or without machinery; kindling wood, masts or spars with or without machinery; canneries; metal stamping; creosoting works; excelsior; iron; steel; copper, zinc, brass, or lead articles or wares not otherwise specified; working in wood not otherwise specified; hardware, tile, brick, terra-cotta, fire-clay, pottery, earthenware, porcelain ware; peat fuel, brickettes; breweries; bottling works; boiler-works; foundries; machine-shops not otherwise specified; cordage; working in foodstuffs, including

oils, fruits and vegetables; working in wool, cloth, leather, paper, broom, brush, rubber or textiles not otherwise specified; making jewelry; making soap, tallow, lard, grease, condensed milk; creameries; printing, electrotyping, photo-engraving, engraving and lithographing, sugar factories.

Miscellaneous Work.

Section 4. (e) Operating stockyards, with or without railroad entry; packing-houses; wharf operations; artificial ice and refrigerating or cold storage plants; tanneries; electric systems not otherwise specified; theater stage employees, including moving picture machine operators; fireworks manufacturing, powder-works.

Hazardous Occupations not Enumerated or Hereafter Arising.

Section 5. If there be or arise any hazardous occupation or work other than hereinbefore enumerated, it shall become under this act and its terms, conditions and provisions as fully and completely as if hereinbefore enumerated.

Meaning of Words Employed in Act.

Section 6. Unless the context otherwise required, words and phrases employed in this act shall have the meanings hereinafter defined.

"Factories" Defined.

Section 6. (a) "Factories" means undertakings in which the business of working at commodities is carried on with power driven machinery, whether in manufacture, repair, or change, and shall include the premises, yards, and plant of the concern.

"Workshop" Defined.

Section 6. (b) "Workshop" means any plant, yard, premises, room or place where power driven machinery is employed and manual labor is exercised by way of trade or gain or otherwise in, or incidental to the process of making, altering, repairing, printing or ornamenting, finishing or adapting for sale, or otherwise, any article, or part of article, machinery, or thing, over which premises, room or place the employer of the person working therein has the right of access or control.

"Mill" Defined.

Section 6. (c) "Mill" means any plant, premises, room, or place where machinery is used; any process of machinery, changing, altering or repairing any article or commodity for sale, or otherwise, together with the yards and premises which are a part of the plant, including elevators, warehouses, and bunkers.

"Mine" Defined.

Section 6. (d) "Mine" means any mine where coal, clay, ore, mineral, gypsum, or rock is dug or mined underground.

"Quarry" Defined.

Section 6. (e) "Quarry" means an open cut from which coal is mined, or clay, ore, mineral, gypsum, sand, shale, gravel, or rock is cut or taken for manufacturing, building, or construction purposes.

"Engineering Work" Defined.

Section 6. (f) "Engineering work" means any work of construction, improvement, or alteration or repair of buildings, streets, highways, sewers,

street railways, railroads, logging roads, interurban roads, harbors, docks, canals; electric, steam or water-power plants; telegraph and telephone plants and lines; electric light and power lines, and includes any other work for the construction, alteration, or repair of which machinery driven by mechanical power is used.

"Reasonably Safe Place to Work" Defined.

Section 6. (g) "Reasonably safe place to work" means that the place of employment has been made as free from danger to the life or safety of the employee as the nature of the employment will reasonably permit.

"Reasonably Safe Tools" Defined.

Section 6. (h) "Reasonably safe tools and appliances" are such tools and appliances as are adapted to, and are reasonably safe for use for the particular purpose for which they are furnished, and shall embrace all safety devices and safeguards provided or prescribed by the "safety provisions" of the act for the purpose of mitigating or preventing a specific danger.

"Employer" Defined.

Section 6. (i) "Employer" means any person, firm, association, or corporation, and includes the state, counties, municipal corporations, cities under special charter and commission form of government, school districts, towns, or villages, and independent contractors, and shall include the legal representatives of a deceased employer.

"Employee" and "Workman" Defined.

Section 6. (j) "Employee" and "Workman" are used synonymously, and means every person in this state, including a contractor other than "an independent contractor," who, after July 1, 1915, is engaged in the employment of an employer carrying on or conducting any of the industries classified in sections 4 (a), 4 (b), 4 (c), 4 (e) and 5 of this act, whether by way of manual labor, or otherwise, or whether upon the premises or at the plant of such employer, or who is engaged in the course of his employment away from the plant of his employer; provided, however,

Injury to Workman Away from Plant and Caused by Nonemployee—Shall Elect Remedy Before Action.

1. If the injury to a workman occurring away from the plant of his employer is due to the negligence or wrong of another not in the same employ, the injured workman, or, if death results from such injury, beneficiaries or dependents, as the case may be, shall elect whether to take under this act or seek a remedy against such others; such election shall be made in advance of the commencement of the action.

Cause of Action Assigned to State.

2. If he take under this act, the cause of action against such other shall be assigned to the state for the benefit of the Industrial Accident Fund, or the employer or insurer, as the case may be.

Prosecution or Settlement of Assigned Cause.

3. Any such cause of action assigned to the state may be prosecuted, or compromised by the board, in its discretion.

Waiver of Compensation by Suit in Court.

4. If such workman, his beneficiaries, or dependents, as the case may be, shall elect to proceed against the person responsible for the injury, such election shall constitute a waiver of any right to compensation under the provisions of this act.

"Injury" to Include Death.

Section 6. (k) "Injury" means and shall include death resulting from injury.

"Beneficiary" Defined.

Section 6. (l) "Beneficiary" means and shall include a surviving wife or husband and a surviving child or children under the age of sixteen years and an invalid child or invalid children over the age of sixteen years, or, if no surviving wife or husband, then the surviving child or children under the age of sixteen years, and any invalid child or children over the age of sixteen years in whom shall vest a right to receive compensation under this act.

"Major Dependent" Defined.

Section 6. (m) "Major dependent" means if there be no beneficiaries as defined in section 6 (1), the father and mother or the survivor of them, if actually dependent to any extent upon the decedent at the time of his injury.

"Minor Dependent" Defined.

Section 6. (n) "Minor dependent" means if there be no beneficiary as defined in section 6 (l), and if there be no major dependent as defined in sections 6 (m), the brothers and sisters, if actually dependent upon the decedent at the time of his injury.

"Invalid" Defined.

Section 6. (o) "Invalid" means one who is physically or mentally incapacitated.

"Child" Defined, to Include Whom.

Section 6. (p) "Child" shall include a posthumous child, a stepchild, a child legally adopted prior to the injury, an illegitimate child legitimized prior to the injury.

"Injury" or "Injured" Defined.

Section 6. (q) "Injury" or "injured" refers only to an injury resulting from some fortuitous event, as distinguished from the contraction of disease.

The Singular and Plural Include Both.

Section 6. (r) Wherever the singular is used the plural shall be included, and wherever the plural is used the singular shall be included.

Masculine Includes All Genders.

Section 6. (s) Wherever the masculine gender is used, the feminine and neuter shall be included.

"Physician" to Include "Surgeon."

Section 6. (t) The term "physician" shall include "surgeon" and in either case shall mean one authorized by law to practice his profession in this state.

"Week" Defined.

Section 6. (u) "Week" means six working days, but includes Sundays.

"Wages" Defined.

Section 6. (v) "Wages" means the average daily wages received by the employee at the time of the injury for the usual hours of employment in a day, and overtime is not to be considered.

"Wife" or "Widow" Defined.

Section 6. (w) "Wife" or "widow" means only a wife or widow living with, or legally entitled to be supported by the deceased at the time of the injury.

"Husband" or "Widower" Defined.

Section 6. (x) "Husband" or "widower" means only a husband or widower incapable of supporting himself, and living with, or legally entitled to be supported by the deceased at the time of her injury.

"Board" Defined.

Section 6. (y) "Board" means the Industrial Accident Board of the state of Montana.

"Commissioner" Defined.

Section 6. (z) "Commissioner" means one of the members of the Industrial Accident Board.

"Appointed Member of the Board" Defined.

Section 6. (aa) "Appointed member of the board" means that member of the Industrial Accident Board appointed by the Governor.

"Order" Defined.

Section 6. (bb) "Order" shall mean and include any decision, rule, regulation, direction, requirement, or standard of the board, or any other determination arrived at or decision made by such board, excepting general or local orders as herein specified.

"General Order" Defined.

Section 6. (cc) "General order" shall mean and include such order made under the safety provisions of this act as applies generally throughout the state to all persons, employments or places of employment, or employees working in such places of employment classed as hazardous in this act.

"Local Order" Defined.

Section 6. (dd) "Local order" shall mean and include any ordinance, order, rule, or determination of any public corporation, or any order or direction of any other public official, board, or department upon any matter over which the Industrial Accident Board has jurisdiction.

"Pay-roll" Defined—Estimate to Establish Pay-roll.

Section 6. (ee) "Pay-roll," "annual pay-roll," or "annual pay-roll for the preceding year," means the average annual pay-roll of the employer for the preceding calendar year, or, if the employer shall not have operated a sufficient or any length of time during such calendar year, twelve times the average monthly pay-roll for the current year, provided that an estimate may be made by the board for any employer starting in business where no

average pay-rolls are available, such estimate to be adjusted by additional payment by the employer or refund by the board, as the case may actually be on December 31st of such current year.

"Year" Defined.

Section 6. (ff) "Year," unless otherwise specified, means calendar year. "Fiscal year" means the period of time between the first day of July and the 30th day of the succeeding June.

"Public corporation" Defined.

Section 6. (gg) "Public corporation" means the state, or any county, municipal corporation, school district, city, city under commission form of government or special charter, town or village.

"Insurer" Defined.

Section 6. (hh) "Insurer" means any insurance company authorized to transact business in this state insuring any employer under this act.

"Casual Employment" Defined.

Section 6. (ii) "Casual employment" means employment not in the usual course of trade, business, profession, or occupation of the employer.

"Plant of the Employer" Includes What.

Section 6. (jj) "The plant of the employer" shall include the place of business of a third person while the employer has access to, or control over such place of business for the purpose of carrying on his usual trade, business, or occupation.

"Independent Contractor" Defined.

Section 6. (kk) "An independent contractor" is one who renders service in the course of an occupation, representing the will of his employer only as the result of his work and not as to the means by which it is accomplished.

Compensation to Children, Brothers and Sisters and Invalid Children—When Ceases.

Section 7. (a) In computing compensation to children and to brothers and sisters, only those under sixteen years of age, or invalid children over the age of sixteen years, shall be included, and, in the case of invalid children, only during the period in which they are under that disability (within the maximum time limitations elsewhere in this act provided), after which payment on account of such person shall cease. Compensation to children, or brothers or sisters (except invalids) shall cease when such persons reach the age of sixteen years.

When Compensation to Beneficiaries, Major or Minor Dependents or Widow Cease.

Section 7. (b) If any beneficiaries or major or minor dependents of a deceased employee die, or if the widow or widower remarry, the right of such beneficiary or major or minor dependent, or such widow or widower, to compensation under this act shall cease.

Compensation not Paid to Nonresident Major or Minor Dependents.

Section 8. (a) No compensation under this act, except as otherwise provided by treaty, shall be paid to any major or minor dependents not residing within the United States at the time of the injury to the decedent.

Compensation to Beneficiary not Residing in United States.

Section 8. (b) Except as otherwise provided by treaty, no compensation in excess of fifty per centum of the compensation provided in this act, shall be payable to any beneficiary not residing within the United States at the time of the injury to the decedent; provided, however, that no compensation shall be allowed to any nonresident, alien beneficiary who is a citizen of a government having compensation law which excludes citizens of the United States, either resident or nonresident, from partaking of the benefit of such law in the same degree as herein extended to nonresident beneficiaries.

Compromise With Nonresident.

Section 8. (c) Nothing in section 8 (b) shall prevent the compromise of any sums due a beneficiary not residing in the United States at the time of the injury to the decedent for a sum less than fifty per centum of the compensation provided in this act, upon the approval of the board of such compromise settlement.

No Compensation to Nonresident Beneficiaries Until When.

Section 8. (d) Before payment of compensation to a beneficiary not residing within the United States, satisfactory proof of such relationship as to constitute a beneficiary under this act shall be furnished by such beneficiary duly authenticated under seal of an officer of a court of law in the country where such beneficiary resides, at such times and in such manner as may be required by the board. And such proof shall be conclusive as to the identity of such beneficiary, and any other claim of any other person to any such compensation shall be barred from and after the filing of such proof.

Payment to Nonresident Beneficiaries Made to Whom.

Section 9. (a) Payment of compensation to a beneficiary not residing within the United States may be made to any plenipotentiary, or consul or consular agent within the United States, representing the country in which such nonresident beneficiary resides, and the written receipt of such plenipotentiary, or consul, or consular agent shall acquit the employer, the insurer, or the board, as the case may be.

Compensation Paid to Parent or Guardian.

Section 9. (b) Where payment is due to a child under sixteen years of age, or to a person adjudged incompetent, the same shall be made to the parent, or to the duly appointed guardian as the case may be, and the written receipt of such parent or guardian shall acquit the employer, the insurer, or board, as the case may be. In other cases, payment shall be made to the person entitled thereto, or to his duly authorized representative.

Claims must be Presented Within What Time.

Section 10. (a) In case of personal injury or death, all claims shall be forever barred unless presented within six months from the date of the happening of the accident.

Time Limitation shall not Run Against Whom—Guardian.

Section 10. (b) No limitations of time, as provided in this act, shall run as against any injured workman who is mentally incompetent and without a guardian, or an injured minor under sixteen years of age who

may be without a parent or guardian. A guardian in either case may be appointed by any court of competent jurisdiction, in which event the period of limitation, as provided in section 10 (a), shall begin to run on the date of the appointment of such guardian, or when such minor arrives at the age of sixteen years.

Employer Liable When Lets Work to Other Than Independent Contractor.

Section 11. (a) Where any employer procures any work to be done, wholly or in part for him, by a contractor other than an independent contractor, and the work so procured to be done is a part or process in the trade or business of such employer, then such employer shall be liable to pay all compensation under this act to the same extent as if the work were done without the intervention of such contractor. And the work so procured to be done shall not be construed to be "casual employment."

Presumption When Employer Lets Work by Contract.

Section 11. (b) Where any employer procures work to be done as specified in section 11 (a), such contractor and his employees shall be presumed to have elected to come under that plan of compensation adopted by the employer, unless they shall have otherwise elected, as provided herein.

When Contractor Performing Casual Employment Becomes the Employer.

Section 11. (c) Where any employer procures any work to be done, wholly or in part for him, by a contractor, where the work so procured to be done is casual employment as to such employer, then such contractor shall become the employer for the purposes of this act.

Work to be Paid for in Property Other Than Money—Wages.

Section 11. (d) Where any employer procures any work to be done, payment for which is to be made in property other than money or its equivalent, and the value of which property is speculative or intangible, the wages of the employees receiving such compensation shall be determined by the board in accordance with the going wage for the same or similar work in the district or locality where the same is to be performed; provided, however, that where an employer procures any work to be done by any contractor, or through him by a subcontractor, the payment for which is to be made in property other than money or its equivalent, and the value of which property is speculative or intangible, then and in that event, the employer shall not be liable for compensation but such liability shall fall upon the contractor or subcontractor as the case may be.

Compensation When Injury Proximate Cause of Death.

Section 12. (a) If an injured employee dies and the injury was the proximate cause of such death, then the beneficiary, or the major or minor dependents of the deceased, as the case may be, shall receive the same compensation as though the death occurred immediately, following the injury, but the period during which the death benefit shall be paid shall be reduced by the period during, or for which compensation was paid for the injury.

When Employee Dies from Cause Other Than Injury.

Section 12. (b) If the employee shall die from some cause other than the injury, there shall be no liability for compensation after his death.

Who Constitutes Beneficiary or Major or Minor Dependent—Date.

Section 12. (c) The question as to who constitutes a beneficiary, or a major or minor dependent, shall be determined as of the date of the hap-

pening of the accident to the employee, whether death shall immediately result therefrom or not.

When Employee Shall Submit to Examinations by Physician.

Section 13. (a) Whenever in case of injury the right to compensation under this act would exist in favor of any employee, he shall, upon the written request of his employer or the insurer, submit from time to time, to examination by a physician, who shall be provided and paid for by such employer or insurer, and shall likewise submit to examination, from time to time, by any physician selected by the board, or any member or examiner, or referee thereof.

Requests or Orders for Examination—Physician may Testify.

Section 13. (b) The request or order for such examination shall fix a time and place therefor, due regard being had to the convenience of the employee and his physical condition and ability to attend at the time and place fixed. The employee shall be entitled to have a physician, provided and paid for by himself, present at any such examination. So long as the employee, after such written request shall fail or refuse to submit to such examination, or shall, in any way obstruct the same, his right to compensation shall be suspended. Any physician employed by the employer, the insurer, or the board, who shall make or be present at any such examination may be required to testify as to the results thereof.

Provisions of Section 16 (f) Waived.

Section 14. (a) Nothing in this act shall be construed as preventing employers and workmen from waiving the provisions of section 16 (f) of this act, and entering into mutual contracts or agreements providing for hospital benefits and accommodations to be furnished to the employee.

Hospital Contracts Shall Provide What.

Section 14. (b) Such hospital contract or agreements must provide for medical, hospital, and surgical attendance for such employee for sickness contracted during the employment, except venereal diseases and sickness as a result of intoxication, as well as for injuries received arising out of and in the course of the employment.

Limit to Hospital Assessments.

Section 14. (c) No assessment of employees for such hospital contracts or benefits shall exceed one dollar per month for each employee, except in cases where it shall appear to the satisfaction of the board, after a hearing had for that purpose that the actual cost of such service exceeds the said sum of one dollar per month, and any such finding of the board may be modified at any time when justified by a change of conditions, or otherwise, either upon the board's own motion, or the application of any party in interest.

No Employer to Make Profit in Hospital Agreements.

Section 14. (d) No profit, directly or indirectly, shall be made by any employer as a result of such hospital contract or assessments. It is the purpose and intent of this act to provide that where hospitals are maintained by employers such hospitals shall be no more than self-supporting from assessment of employees, and that where hospitals are maintained by other than the employer, all sums derived by assessment of employees shall be paid in full to such hospital without deduction by the employer.

Board to have Supervision of Hospitals Maintained in Part by Assessments of Workmen—Reports.

Section 14. (e) Each and every hospital maintained wholly or in part by payments from workmen, which furnishes treatment and services to employees for sickness and injury, as provided in this act, shall be under the supervision of the board as to the services and treatment rendered such employees, and shall, from time to time, make reports of such services, attendances, treatments, receipts and disbursements as the board may require.

Liability for Treatment or Malpractice in Case of Hospital Services.

Section 14. (f) Neither an employer, an insurer, nor the board, shall be liable in any way for any act in connection with the treatment or care, or malpractice in treatment or care, of any sickness or injury sustained by an employee, or the beneficiary of any hospital contract, where such act or treatment or malpractice in treatment is caused, or alleged to have been caused, by any physician, hospital, or attendant furnished by such employer, insurer, or the board. In any action for malpractice arising out of the operations of this act the merits of such action shall be investigated by the Industrial Accident Board and the finding of the board in relation thereto shall be filed with the clerk of the court in which such action is pending.

Questions of Law in Certain Actions.

Section 15. In any action to recover damages for any act connected with the treatment or cure, or malpractice in treatment or care, of any sickness of, or injury sustained by an employee, the question of whether or not due care was given by the defendants shall be a question of law for the court.

Who Liable for Injuries Under the Different Plans of Act, and in What Amounts.

Section 16. Every employer who shall become bound by and subject to the provisions of Compensation Plan No. 1, and every employer and insurer who shall become bound by and subject to the provisions of Compensation Plan No. 2, and the Industrial Accident Fund where the employer of the injured employee has become bound by and subject to the provisions of Compensation Plan No. 3, shall be liable for the payment of compensation in the manner and to the extent hereinafter provided to an employee who has elected to come under this act and who shall receive an injury arising out of and in the course of his employment, or, in the case of his death from such injury, to his beneficiaries, if any; or, if none, to his major dependents, if any; or, if none, to his minor dependents, if any.

Compensation for Injury Producing Temporary Total Disability.

Section 16. (a) For an injury producing temporary total disability, fifty per centum of the wages received at the time of the injury, subject to a maximum compensation of ten dollars per week and a minimum compensation of six dollars per week; provided, that if at the time of injury the employee received wages of less than six dollars per week, he shall receive the full amount of such wages per week. Such compensation shall be paid during the period of disability, but not, however, in any event, exceeding three hundred weeks.

For Total Disability, Permanent in Character.

Section 16. (b) For an injury producing total disability, permanent in character, fifty per centum of the wages received at the time of the injury, subject to a maximum compensation of ten dollars per week and a minimum compensation of six dollars per week; provided, that if at the time of the injury the employee received wages of less than six dollars per week, then he shall receive the full amount of such wages per week. Such compensation shall be paid during the period of disability, not exceeding four hundred weeks, after which time payments shall continue during disability at the rate of five dollars per week.

For Partial Disability.

Section 16. (c) For an injury producing partial disability, one-half of the difference between the wages received at the time of the injury and the wages which such injured employee is able to earn thereafter, not exceeding, however, the difference between the wages which the injured employee is able to earn after the injury and the maximum compensation allowed in cases of total disability; provided, however, that such a sum shall be paid as compensation in each case, which, when added to the wages which the injured employee is able to earn after the injury, will equal the minimum compensation allowed in cases of total disability. Such compensation shall be paid during the period of disability, not exceeding, however, one hundred and fifty weeks in cases of permanent partial disability and fifty weeks in cases of temporary partial disability.

For Injury Causing Death.

Section 16. (d) Where the injury causes death, fifty per centum of the wages received at the time of the injury, to his beneficiaries, if any, residing within the United States at the date of the happening of the injury, or, if residing outside of the United States, fifty per centum of such compensation, or, if none, then forty per centum of the wages received at the time of the injury to his major dependents, if any, if residing in the United States at the date of the happening of the injury, or, if none, then thirty per centum of the wages received at the time of the injury, to his minor dependents, if any, residing within the United States at the date of the happening of the injury, subject to a maximum compensation of ten dollars per week, and a minimum compensation of six dollars per week, for a period not exceeding four hundred weeks; provided, that if at the time of the injury the employee received wages of less than six dollars per week, the full amount of such wages per week for a period of not exceeding four hundred weeks.

Additional Compensation in Case Death Occurs Within Six Months.

Section 16. (e) There shall be paid, in addition to other compensation, if death occurs within six months of the happening of the injury, the reasonable burial expenses of the employee, not exceeding seventy-five dollars. If the employee leaves no beneficiaries, or major, or minor dependents, this shall be the only compensation.

Medical and Hospital Services to be Furnished.

Section 16. (f) During the first two weeks after the happening of the injury, the employer or insurer, or the accident fund, as the case may be, shall furnish reasonable medical and hospital services and medicines as and when needed, in an amount not to exceed fifty dollars in value, except

as otherwise in this act provided, and when the employer is a party to a hospital contract, unless the employee shall refuse to allow them to be furnished.

No Compensation During First Two Weeks.

Section 16. (g) No compensation shall be allowed or paid during the first two weeks of any injury, except as may be required by the provisions of section 16 (f).

Compensation to Run Consecutively—Minor Dependents not Residing in United States.

Section 16. (h) Compensation for all classes of injuries shall run consecutively and not concurrently, and as follows: First, the two weeks medical and hospital services and medicines as provided in section 16 (f), unless the employee is a contributor to a hospital fund, as otherwise in this act provided; after the first two weeks, compensation as provided in section 16 (a), or 16 (b), or 16 (c); following, either or none of the above, compensation as provided in section 16 (i); following any or either, or none of the above, if death results from the accident within six months of the date of the injury, burial expenses as provided in section 16 (e); following which, compensation to beneficiaries, if any; following which, if no beneficiaries, compensation to major dependents; following which, if no beneficiaries and no major dependents, compensation to minor dependents, if any. Provided, that no compensation shall be paid to a major or minor dependent who does not reside within the United States, or who did not reside within the United States at the date of the happening of the injury. Compensation due to beneficiaries shall be paid to the surviving spouse, if any, or if none, then divided equally among or for the benefit of the children. Compensation due to major dependents, where there be more than one, shall be divided equally among them.

Compensation in Case of Following Injuries in Lieu All Other Except That Provided in Section 16 (f).

Section 16. (i) In case of the following specified injuries, the compensation, in lieu of any other compensation provided by this act, other than that provided in section 16 (f), unless the employee is a contributor to a hospital fund as otherwise in this act provided, shall be fifty per centum of the wages received at the time of the injury, subject to a maximum compensation of ten dollars per week and a minimum compensation of six dollars per week; provided, that if, at the time of the injury the employee received wages of less than six dollars per week, then he shall receive the full amount of such wages per week, and shall be paid for the following periods:

For the loss of:

One arm at or near shoulder	200 weeks
One arm at the elbow	180 weeks
One arm between the wrist and elbow	160 weeks
One hand	150 weeks
One thumb and the metacarpal bone thereof	60 weeks
One thumb at the proximal joint	30 weeks
One thumb at the second distal joint	20 weeks
One first finger and the metacarpal bone thereof	30 weeks
One first finger at the proximal joint	20 weeks

One first finger at the second joint ..... 15 weeks
One first finger at the distal joint ..... 10 weeks
One second finger and the metacarpal bone thereof..... 30 weeks
One second finger at the proximal joint ..... 15 weeks
One second finger at the second joint ..... 10 weeks
One second finger at the distal joint ..... 5 weeks
One third finger and the metacarpal bone thereof.....20 weeks
One third finger at the proximal joint ..... 12 weeks
One third finger at the second joint ..... 8 weeks
One third finger at the distal joint ..... 4 weeks
One fourth finger and the metacarpal bone thereof..... 12 weeks
One fourth finger at the proximal joint ..... 9 weeks
One fourth finger at the second joint ..... 6 weeks
One fourth finger at the distal joint ..... 3 weeks
One leg at or so near the hip joint as to preclude the use of an artificial limb .....180 weeks
One leg at or above the knee where stump remains sufficient to permit the use of an artificial limb..... 150 weeks
One leg between the knee and ankle.....140 weeks
One foot at the ankle.....125 weeks
One great toe with the metatarsal bone thereof..... 30 weeks
One great toe at the proximal joint..... 15 weeks
One great toe at the second joint ..... 10 weeks
One toe other than the great toe with the metatarsal bone thereof ..... 12 weeks
One toe other than the great toe at proximal joint..... 6 weeks
One toe other than the great toe at second or distal joint..... 3 weeks
One eye by enucleation.....120 weeks
Total blindness of one eye.....100 weeks

What Constitutes Total Disability.

The loss of both hands, or both arms, or both feet, or both legs, or both eyes, or any two thereof, in the absence of conclusive proof to the contrary shall constitute total disability, permanent in character.

Hernia Cases.

Section 16. (j) A workman in order to be entitled to compensation for hernia must clearly prove: (1) That the hernia is of recent origin, (2) that its appearance was accompanied by pain, (3) that it was immediately preceded by some accidental strain suffered in the course of the employment, and (4) that it did not exist prior to the date of the alleged injury. If a workman, after establishing his right to compensation for hernia as above provided, elects to be operated upon, a special operating fee of not to exceed fifty dollars shall be paid by the employer, the insurer, or the board, as the case may be. In case such workman elects not to be operated upon, and the hernia becomes strangulated in the future, the results from such strangulation will not be compensated.

Paralysis of Limbs Considered Loss Thereof.

Section 16. (k) For the purpose of section 16 (i), the complete paralysis of an arm, hand, foot, or leg shall be considered the loss of such member. For the purpose of section 16 (i), the complete paralysis of both arms, both hands, both feet, or both legs, or any two of them, shall be considered the loss of such members.

Adjustment of Compensation in Case of Further Injuries.

Section 16. (l) Should a further accident occur to a workman who is already receiving compensation hereunder, or who has been previously the recipient of a payment or payments under this act, his further compensation shall be adjusted according to the other provisions of this act, and with regard to the combined effect of his injuries and his past receipt of compensation.

Compensation When Changes in Degree of Injury.

Section 16. (m) If aggravation, diminution or termination of disability takes place, or be discovered, after the rate of compensation shall have been established, or compensation terminated in any case, where the maximum payments for disabilities as provided in this act have not been reached, such changes may be adjusted for future application of compensation in accordance with the provisions hereof, or, in a proper case, terminate the payments.

Payments Made How.

Section 16. (n) All payments of compensation, as provided in this act, shall be made monthly, except as otherwise provided herein.

Monthly Payments Converted into a Lump Sum.

Section 16. (o) The monthly payments provided for in this act may be converted, in whole or in part, into a lump sum payment, which lump sum payment shall not exceed the estimated value of the present worth of the deferred payments capitalized at the rate of five per centum per annum. Such conversion can only be made upon the written application of the injured workman, his beneficiary or major or minor dependents, as the case may be, and shall rest in the discretion of the board, both as to the amount of such lump sum payment, and the advisability of such conversion.

Assignment or Attachment of Payments.

Section 17. (a) No payments under this act shall be assignable, subject to attachment or garnishment, or be held liable in any way for any debts.

Liability in Case of Bankruptcy or Failure is First Lien.

Section 17. (b) In case of bankruptcy, insolvency, liquidation, or the failure of an employer or insurer to meet any obligations imposed by this act, every liability which may be due under this act shall constitute a first lien upon any deposit made by such employer or insurer, and if such deposit shall not be sufficient to secure the payment of such liability in the manner, and at the times provided for in this act, the deficiency shall be a lien upon all the property of such employer or insurer within this state, and shall be prorated with other lienable claims and shall have preference over the claim of any creditor or creditors of such employer or insurer except the claims of other lienors.

Waivers Invalid.

Section 17. (c) No agreement by an employee to waive any rights under this act for an injury to be received shall be valid.

Misrepresenting Pay-roll.

Section 17. (d) Any employer who shall misrepresent to the board the amount of a pay-roll upon which the premiums or assessments under

Compensation Plan No. 3 are to be levied, or upon which fees for factory inspection, subsequent inspection, or reinspection, as elsewhere provided in this act, are based, shall be liable to the state in ten times the amount of difference between the amount paid and the amount which should have been paid. Such liability may be recovered in a civil action brought in the name of the state. All sums collected under this section shall be paid into the fund to which the original payments were, or should have been credited.

Act not to Apply to Certain Railroads.

Section 17. (e) The provisions of this act shall not apply to any railroad engaged in interstate commerce, except that railroad construction work shall be included in and subject to the provisions of this act.

Duplicate Receipts Paid for Injuries to be Filed—Statements of Medical Expenditures.

Section 17. (f) Every employer coming under the provisions of Compensation Plan No. 1, and every insurer coming under the provision of Compensation Plan No. 2, shall, on or before the fifteenth day of each and every month, file with the Industrial Accident Board duplicate receipts for all payments made during the previous month to injured workmen or their beneficiaries or dependents; and statements showing the amounts expended during the previous month for medical, surgical and hospital services and for the burial of injured workmen.

Notice of Claims for Injuries Other Than Death.

Section 17. (g) No claims to recover compensation under this act, for injuries not resulting in death, shall be maintained unless, within sixty days after the occurrence of the accident which is claimed to have caused the injury, notice in writing, stating the name and address of the person injured, the time and the place where the accident occurred and the nature of the injury, and signed by the person injured, or some one in his behalf, shall be served upon the employer or the insurer; provided, however, that actual knowledge of such accident and injury on the part of such employer or his managing agent or superintendent in charge of the work upon which the injured employee was engaged at the time of the injury shall be equivalent to such service.

Employers and Insurers Required to File Reports of Accidents.

Section 17. (h) Every employer of labor, and every insurer is hereby required to file with the board, under such rules and regulations as the board may from time to time make, a full and complete report of every accident to an employee arising out of or in the course of his employment and resulting in loss of life or injury to such person. Such reports shall be furnished to the board in such form and such detail as the board shall from time to time prescribe, and shall make specific answers to all questions required by the board under its rules and regulations, except, in case he is unable to answer any such questions, a good and sufficient reason shall be given for such failure.

Confidential Information Used How.

Section 17. (i) No information furnished to the board by an employer or an insurer shall be open to public inspection, or made public except on order of the board, or by the board or a member of the board in the course

of a hearing or proceeding. Any officer or employee of the board who, in violation of the provisions of this section divulges any information, shall be guilty of a misdemeanor.

American Experience Table of Mortality Used.

Section 17. (j) Whenever it is necessary to estimate the sum of money to set aside as a reserve in any case, the American Experience Table of Mortality shall be used.

Misdemeanor for Employer to Deduct from Wages Any Part of Premium—Hospital Contributions.

Section 17. (k) It shall be unlawful for the employer to deduct or obtain any part of any premium required to be paid by this act from the wages or earnings of his workmen, or any of them, and the making, or attempt to make any such deduction shall be a misdemeanor, except that nothing in this section shall be construed as prohibiting contributions by employees to a hospital fund, as elsewhere in this act provided.

Hearings and Investigations—Technical Rules.

Section 18. (a) All hearings and investigations before the board, or any member thereof, shall be governed by this act and by rules of practice and procedure to be adopted by the board, and in the conduct thereof neither the board, nor any member thereof shall be bound by the technical rules of evidence. No informality in any proceedings, or in the manner of taking testimony shall invalidate any order, decision, award, rule or regulation made, approved, or confirmed by the board.

Depositions may be Taken.

Section 18. (b) The board, or any member thereof, or any party to the action or proceeding may, in any investigation or hearing before the board, cause the deposition of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions in civil actions in the districts courts of this state, and to that end may compel the attendance of witnesses and the production of books, documents, papers, and accounts.

Powers of Board.

Section 18. (c) The board is hereby vested with full power, authority and jurisdiction to do and perform any and all things, whether herein specifically designated or in addition thereto, which are necessary or convenient in the exercise of any power, authority, or jurisdiction conferred upon it under this act.

Power to Issue Writs and Process—Fees for Serving.

Section 18. (d) The board and each member thereof shall have power to issue writs of summons, warrants of attachment, warrants of commitment, and all necessary process in proceedings for contempt in like manner and to the same extent as courts of record. The process issued by the board, or any member thereof, shall extend to all parts of the state and may be served by any persons authorized to serve process of courts of record, or by any person designated for that purpose by the board, or any member thereof.

The person executing any such process shall receive such compensation as may be allowed by the board, not to exceed the fees now prescribed

by law for similar service and such fees shall be paid in the same manner as provided herein for the fees of witnesses.

Power to Administer Oaths, Certify Official Acts, Issue Subpoenas—Witness Fees and Mileage.

Section 18. (e) The board, and each member thereof, its secretary and referees, shall have the power to administer oaths, certify to all official acts, and to issue subpoenas for the attendance of witnesses and the production of papers, books, accounts, documents and testimony in any injury, investigation, hearing, or proceeding in any part of the state. Each witness who shall appear, by order of the board, or any member thereof, shall be entitled to receive, if demanded, for his attendance the same fees and mileage allowed by law to a witness in civil cases in the district court, which amount shall be paid by the party at whose request such witness is subpoenaed, unless otherwise ordered by the board. When any witness, who has not been required to attend at the request of any party, is subpoenaed by the board, his fees and mileage may be paid from the funds appropriated for the use of the board in the same manner as other expenses of the board are paid. Any witness subpoenaed, except one whose fees and mileage may be paid from the funds of the board, may at the time of service demand the fee to which he is entitled for travel to and from the place of which he is required to appear, and one day's attendance. If such witness demands such fees at the time of service and they are not at that time paid or tendered, he shall not be required to attend before the board, or a member thereof or referee, as directed in the subpoena.

District Courts' Power Concerning Production of Testimony—Contempt.

Section 18. (f) The district court in and for the county in which any inquiry, investigation, hearing or proceeding may be held by the board, or any member thereof, shall have the power to compel the attendance of witnesses, the giving of testimony and the production of papers, books, accounts and documents as required by any subpoena issued by the board, or any member thereof. The board, or any member thereof, before whom the testimony is to be given or produced, in case of the refusal of any witness to attend or testify or produce any papers required by such subpoena, may report to the district court in and for the county, in which the proceeding is pending, by petition, setting forth that due notice has been given of the time and place fixed for the attendance of said witness, or the production of said papers, and that the witness has been summoned in the manner prescribed in this act, and that the witness has failed and refused to attend, or produce the papers required by the subpoena before the board or any member thereof in the case or proceeding named in the notice and subpoena, or has refused to answer questions propounded to him in the course of such proceedings, and ask an order of said court compelling the witness to attend and testify or produce said papers before the board. The court, upon the petition of the board, or any member of the board, shall enter an order directing the witness to appear before the court at the time and place to be fixed by the court in such order not more than ten days from the date of the order, and then and there show cause why he had not attended or testified, or produced such papers before the board. A copy of said order shall be served upon said witness. If it shall appear to the court that said subpoena was regularly issued by the board, or a member thereof, and regularly served, the court shall thereupon enter an order that

said witness appear at the time and place fixed in said order, and testify or produce the required papers, and upon failure to obey said order, said witness shall be dealt with as for contempt of court. The remedy provided in this section is cumulative and shall not be construed to impair or interfere with the power of the board, or a member thereof, to enforce the attendance of witnesses and the production of papers, and to punish for contempt, in the same manner and to the same extent as courts of record.

Certified Copies as Evidence.

Section 18. (g) Copies of official documents and orders filed or deposited according to law in the office of the board, certified by a member of the board or by the secretary under the official seal of the board to be true copies of the original shall be evidence in like manner as the originals.

Apportionment of Costs and Disbursements.

Section 18. (h) The costs and disbursements, incurred in any proceeding or hearing before the board, or a member thereof, may be apportioned between the parties on the same or adverse sides in the discretion of the board.

Books, Records and Pay-rolls Open to Inspection.

Section 19. The books, records, and pay-rolls of the employer, pertinent to the administration of this act, shall always be open to inspection by the board or any duly authorized employee thereof, for the purpose of ascertaining the correctness of the pay-roll; the number of men employed, and such other information as may be necessary for the board and its management under this act. Refusal on the part of the employer to submit said books, records, and pay-rolls for such inspection shall subject the offending employer to a penalty of one hundred dollars for each offense, to be collected by civil action in the name of the state, and paid into the Industrial Administration Fund.

Jurisdiction of Board to Hear Disputes and Controversies.

Section 20. (a) All proceedings to determine disputes or controversies arising under this act shall be instituted before the board, and not elsewhere, and heard and determined by them, except as otherwise in this act provided, and the board is hereby vested with full power, authority and jurisdiction to try and finally determine all such matters, subject only to review in the manner and within the time in this act provided.

Presumption as to Legality of Rules, Orders, Findings, etc., of Board.

Section 20. (b) All orders, rules, and regulations, findings, decisions, and awards of the board in conformity with law shall be in force and shall be prima facie lawful; and all such orders, rules, and regulations, findings, decisions, and awards shall be conclusively presumed to be reasonable and lawful, until and unless they are modified or set aside by the board or upon review.

Time for Filing—Final Findings and Awards.

Section 20. (c) After a final hearing by the board, it shall within thirty days make and file its findings upon all facts involved in the controversy, and its award, which shall state its determination as to the right of the parties.

Power of Board to Award Compensation and Time and Manner of Payment.

Section 20. (d) The board in its award may fix and determine the total amount of compensation to be paid and specify the manner of payment, or may fix and determine the weekly disability indemnity to be paid and order payment thereof during the continuance of such disability; providing, however, that the payment of such award and indemnity shall be in the same manner as that of undisputed awards and indemnities coming within the particular plan provided for in this act to which said award and indemnity belong.

When a Nominal Disability Indemnity may be Awarded.

Section 20. (e) If in any proceeding it is proved that an accident has happened for which the employer would be liable to pay compensation if disability has resulted therefrom, but it is not proved that an incapacity has resulted, the board may, instead of dismissing the application, award a nominal disability indemnity if it appears that disability is likely to result at a future time.

Jurisdiction to Rescind or Amend any Order, Decision, Award, etc.

Section 20. (f) The board shall have continuing jurisdiction over all its orders, decisions, and awards and may, at any time, upon notice, and after opportunity to be heard is given to the parties in interest, rescind, alter, or amend any such order, decision, or award made by it upon good cause appearing therefor. Any order, decision, or award rescinding, altering, or amending a prior order, decision or award, shall have the same effect as original orders, or awards.

Records of Proceedings to be Kept and Testimony to be Taken Down — Attorneys.

Section 20. (g) A full and complete record shall be kept of all proceedings and hearings had before the board or any member thereof, of any formal hearing had and all testimony produced before the board, or any member thereof, shall be taken down by a stenographic reporter appointed by the board, and the parties shall be entitled to be heard in person or by attorney. In cases of an action to review any order or decision of the board, a transcript of such testimony, together with all exhibits, and of the pleadings, records and proceedings in the cause shall constitute the record of the board.

Collateral Attack not Permitted.

Section 20. (h) No orders or decisions of the board shall be subject to collateral attack, and may be reviewed or modified only in the manner provided herein.

Application for Rehearing.

Section 21. (a) At any time within twenty days after the service of any order or decision of the board, any party or parties aggrieved thereby may apply for a rehearing upon one or more of the following grounds and upon no other grounds.

1. That the board acted without or in excess of its powers.
2. That the order, decision or award was procured by fraud.
3. That the evidence does not justify the findings.
4. That the applicant has discovered new evidence, material to him, and which he could not, with reasonable diligence, have discovered and produced at the hearing.

5. That the findings do not support the order, decision or award.
6. That the order, decision, or award is unreasonable.

Board may at Any Time Diminish or Increase an Award.

Section 21. (b) Nothing contained in section 21 (a) shall, however, be construed to limit the right of the board, at any time after the date of its award, and from time to time after due notice and upon the application of any party interested to review, diminish or increase within the limits provided by this act, any compensation awarded upon the grounds that the disability of the person in whose favor such award was made has either increased or diminished or terminated.

Application for Rehearing to Set Forth What.

Section 21. (c) The application for rehearing shall set forth specifically and in full detail the grounds upon which the applicant considers said order, decision, award, rule, or regulation to be unjust or unlawful, and shall in other respects conform to such rules and regulations as the board may prescribe.

Rules of Procedure on Rehearings.

Section 21. (d) The board shall have full power and authority to make and prescribe rules to govern the procedure upon rehearing, and any matter before it and any order made after such rehearing abrogating or changing the original order shall have the same force and effect as an original order and shall not affect any right, or enforcement of any right, arising from or by virtue of the original order.

Application for Rehearing or Appeal Shall not Operate as Stay.

Section 21. (e) An application for rehearing or the appeal hereinafter provided shall not excuse any employer, employee or other person, from complying with or obeying any order or requirement of the board, or operate in any manner to stay or postpone the enforcement of an order or requirement thereof, except as the board or the court may direct.

Appeals to the District Court.

Section 22. (a) Within thirty days after the application for a rehearing is denied, or, if the application is granted, within thirty days after the rendition of the decision on the rehearing, and within twenty days after notice thereof, any party affected thereby may appeal to the district court of the judicial district of the state of Montana, including the county in said state wherein the employer may have his place of residence, or if such employer be a corporation, may have its principal office or place of business, or if said appeal be prosecuted by an injured workman or his dependents, such appeal may be taken to the district court wherein is located the county within which such workman was injured, which said appeal shall be for the purpose of having the lawfulness of the original order, decision or award, or the order, decision or award on rehearing inquired into and determined.

How Appeal Taken—Notice—Record—Trial.

Section 22. (b) Said appeal shall be taken by serving a written notice of said appeal upon the chairman of such Industrial Accident Commission, or upon any other member thereof, which said service shall be made by the delivery of a copy of such notice to such chairman or member, and filing the original with the clerk of the court to which said appeal is taken. A copy of such notice must also be served upon the adversary party if there

be any, by mailing the same to said adversary party to such address of such party as said party shall have left with the board. If such party shall have left no address with the board then no service upon such party shall be required. The order of filing and service of said notice is immaterial. Immediately upon service upon said board of said notice, the said board shall certify to said district court the entire record and proceedings, including all testimony and evidence taken by said board, with the clerk of said district court. Immediately upon the return of such certified record, the district court shall fix a day for the hearing of said cause, and shall cause notice to be served upon the board and upon the appellant, and also upon the adversary party, if there be any. The court may, upon the hearing, for good cause shown, permit additional evidence to be introduced, but, in the absence of such permission from the court, the cause shall be heard, on the record of the board as certified to the court by it. The trial of the matter shall be de novo, and upon such trial the court shall determine whether or not the board regularly pursued its authority, and whether or not the findings of the board ought to be sustained, and whether or not such findings are reasonable under all the circumstances of the case.

Appearances—Setting Aside Conclusions, Orders, etc., of Board—Judgment and Findings.

Section 22. (c) The board, and each party to the action or proceeding before the board, shall have the right to appear in the proceeding, and it shall be the duty of the board to so appear. If the court shall find from such trial, as aforesaid, that the findings and conclusions of the board are not in accordance with either the facts or the law, or that they ought to be other or different than those made by the board, or that any finding and conclusion or any order, rule or requirement of the board is unreasonable, the court shall set aside such finding, conclusion, order, judgment, decree, rule, or requirement of said board, or shall modify or change the same as law and justice shall require, and the court shall also make and enter any finding, conclusion, order or judgment that shall be required, or shall be legal and proper in the premises.

Appeals to Supreme Court.

Section 22. (d) Either the board, or the appellant, or any adversary party, if there be one, may appeal to the supreme court of the state of Montana, from any final order, judgment or decree of the said district court, which said appeal shall be taken in like manner as appeals are now taken in other civil actions to the said supreme court, and upon such appeal the said supreme court shall make such orders in reference to a stay of proceedings as it finds to be just in the premises, and may stay the operation of any order, judgment, or decree of said district court without requiring any bond or undertaking from the applicant for such stay. When any such cause is so appealed it shall have precedence upon the calendar of the said supreme court, and shall be tried anew by said supreme court upon the record made in said district court and before said board, and judgment and decree shall be entered therein as expeditiously as possible.

Appropriation Out of State Treasury.

Section 23. (a) There is hereby appropriated out of the state treasury, the sum of fifty thousand ($50,000) dollars, or so much thereof as may be necessary, to be known as the Industrial Administration Fund, out of

which the salaries, traveling and office expenses of the board shall be paid, and all other expenses incident to the administration of this act.

Appropriation from Industrial Accident Fund.

Section 23. (b) There is hereby appropriated out of the Industrial Accident Fund such sums as may be necessary to pay the compensation provided for in this act.

Court to Give Liberal Construction to Act.

Section 24. (a) Whenever this act, or any part or section thereof, is interpreted by a court, it shall be liberally construed by such court.

Effect of Decision Holding Any Part of Act Unconstitutional.

Section 24. (b) If any section, subsection, subdivision, sentence, clause, paragraph, or phrase of this act is for any reason held to be unconstitutional or void, such decision shall not affect the validity of the remaining portions of this act, so long as sufficient remains of the act to render the same operative and reasonably effective for carrying out the main purpose and intention of the legislature in enacting the same as such purpose and intention may be disclosed by the act.

Money in Industrial Accident Fund Held in Trust.

Section 24. (c) The moneys coming into the Industrial Accident Fund shall be held in trust for the purpose for which such fund is created, and if this act shall be hereafter repealed, such moneys shall be subject to such disposition as may be provided by the legislature repealing this act; in default of such legislative provision, distribution thereof shall be in accordance with the justice of the matter, due regard being had to obligations of compensation incurred and existing.

Pending Actions not Affected by Act.

Section 24. (b) This act shall not affect any action pending or any cause of action existing on the thirtieth day of June, 1915.

Annual Report—Copies for General Distribution.

Section 25. (a) The board shall, not later than the first day of October of each year, make a report to the Governor covering its entire operations and proceedings for the preceding fiscal year, with such suggestions or recommendations as it may deem of value for public information. A reasonable number of copies of such report shall be printed for general distribution.

When Act to Take Effect.

Section 25. (b) This act shall take effect and be in force from and after its passage and approval, except as to its compensation provisions, which shall not take effect until the first day of July, 1915.

PART II.

COMPENSATION PLAN No. 1.

When and How Employer may Elect to Adopt—Direct Payment to Employee.

Section 30. (a) Any employer in the industries, trades, works, occupations, or employments in this act specified as hazardous, by filing his election to become subject to and be bound by Compensation Plan No. 1, upon

furnishing satisfactory proof to the board of his solvency and financial ability to pay the compensation and benefits in this act provided for, and to discharge all liabilities which are reasonably likely to be incurred by him during the fiscal year for which such election is effective, may by order of the said board, make such payments directly to his employees as they may become entitled to receive the same under the terms and conditions of this act.

Proof of Solvency of Employer Electing Plan No. 1 to be Filed.

Section 30. (b) Every such employer now or hereafter engaged in the state of Montana, in the industries, trades, works, occupations or employments herein mentioned, and who shall have elected to be bound by such Compensation Plan No. 1, shall file such proof of his solvency within the time and in such form as may be prescribed by the rules or orders of the board.

Employer Permitted to Carry on Business and Settle Directly With Employee—Renewal of Application.

If such employer, making such election, shall be found by the board to have the requisite financial ability to pay the compensation and benefits in this act provided for, then the board shall grant to such employer permission to carry on his said business for the fiscal year within which such election is made, and such proof filed, or the remaining portion of such fiscal year, and to make such payments directly to his employees as they may become entitled to receive the same. Every employer, so long as he continues in his said employment, and so long as he continues to be bound by such Compensation Plan No. 1, shall at least thirty days before the expiration of each fiscal year, renew his aplication to be permitted to continue to make such payments as aforesaid directly to his employees for the next ensuing fiscal year, and under like circumstances as those mentioned for the granting of such permission upon such first application, the board may renew the same from year to year.

Additional Proof of Solvency—Revocation of Order.

Section 30. (c) The board may at any time require from any employer acting under Compensation Plan No. 1 additional proof of solvency and financial ability to pay the compensation provided by this act, and may at any time, upon notice to such employer, of not less than ten or more than twenty days, after and upon a full hearing, revoke any order or approval theretofore made.

Requiring Security of Employer.

Section 30. (d) If said Industrial Accident Board shall find that such employer has not financial responsibility for the payment of the compensation herein provided to be paid which might reasonably be expected to be chargeable to such employer during the fiscal year to be covered by such permission, said Industrial Accident Board must so find, and must require such employer, before granting to him such permission, or before continuing or engaging in such employment, subject to the provisions of Compensation Plan No. 1, to give security for such payment, which security must be in such an amount as said board shall find is reasonable and necessary to meet all liabilities of such employer which may reasonably and ordinarily be expected to accrue during such fiscal year. Said security must be deposited with the treasurer of the board and may be a certain estimated

per centum of said employer's last preceding annual pay-roll, or a certain per centum of the established amount of his annual pay-roll for said fiscal year, or said security may be in the form of a bond or undertaking executed to said Industrial Accident Board in the amount to be fixed by it with two or more sufficient sureties, which undertaking must be conditioned that such employer will well and truly pay, or cause to be paid, all such sums and amounts for which the employer shall become liable under the terms of this act to his employees during said fiscal year or such security may consist of any state, county, municipal, or school district bonds, or the bonds or evidence of indebtedness of any individuals or corporations which the board may deem solvent; and every such deposit and the character and amount of such securities shall at all times be subject to approval, revision, or change by the board as in its judgment may be required, and upon proof of the final payment of the liability for which such securities are given, such securities, or any remaining part thereof, shall be returned to the depositor. The treasurer of the board and his bondsmen shall be liable for the value and safekeeping of all such deposits or securities, and shall at any time, upon demand of the bondsmen or the depositor or the board, account for the same, and the earnings thereof.

Failure of Employer to Pay Compensation—Duty of Board.

Section 30. (e) Upon the failure of said employer to pay any compensation provided for in this act upon the terms and in the amounts and at the times when the same shall become due and payable, it shall be the duty of such State Accident Board, upon demand of the person to whom compensation is due, to apply any deposits made with the board to the payment of the same, and it shall be its duty to take the proper steps to convert any securities on deposit with the said board, or sufficient thereof, into cash and to pay the same upon the liabilities of said employer, accruing under the terms of this act, and it shall be its duty, in so far as the same shall be necessary, to collect and enforce the collection of the liability of all sureties upon any bonds which may be given by the said employer to insure the payment of his said liability. And to these ends, and for these purposes, the board shall be deemed to be the owner of said deposit and security and the obligee in said bond in trust for the said purposes and may proceed in its own name to recover upon such bonds or foreclose and liquidate said securities.

When Employer to Make Deposit or Security to Guarantee Payment of Compensation.

Section 30. (f) Within thirty days after the happening of an accident where death or the nature of the injury renders the amount of future payments certain, or reasonably certain, the employer shall make a deposit or give security as herein defined with the treasurer of the board for the protection and guaranty of the payment of such liability in such sum as the board may direct; provided, however, that if sufficient securities are already on deposit with the said board or if the said board, shall have determined that the employer has sufficient financial responsibility to meet said liability of the said employer, together with other liabilities already accrued, no such additional deposit or security shall be demanded.

How Employer may be Relieved from Liability.

Section 30. (g) Any employer against whom liability may exist for compensation under this act may, with the approval of the board, be re-

lieved therefrom by (1) depositing the present value or the estimated present value of the total unpaid compensation for which such liability exists, assuming interest at five per centum per annum, with the treasurer of the board; or (2) purchasing an annuity within the limitations provided by law, in any insurance company granting annuities, and authorized to transact business in this state, subject to the approval of the board.

PART III.

COMPENSATION PLAN No. 2.

Employer Electing Plan No. 2 to Insure His Liability.

Section 35. (a) Any employer in the industries, trades, works, occupations, or employments in this act specified as hazardous, by filing his election to become subject to and bound by Compensation Plan No. 2, may insure his liability to pay the compensation and benefits herein provided for, in any insurance company authorized to transact such business in this state.

Duty of Employer Electing Plan No. 2—Amount of Insurance Necessary.

Section 35. (b) Any employer electing to become subject to and bound by Compensation Plan No. 2 shall file with the board written acceptance of the provisions of Compensation Plan No. 2, together with a statement upon forms provided by the board of the nature of his employment, the character and location of his works, the number of men employed during the preceding year, or any part of the preceding year, and the probable number of men to be employed during the first fiscal year to be covered by such election, and the board shall thereupon determine the amount of insurance which will be reasonably necessary to secure the compensation with which the said employer may reasonably be expected to become chargeable during such fiscal year. And thereupon, the said employer shall file the policy or policies of insurance herein provided for with the board, which policy or policies shall insure in the amounts so fixed by the board against any and all liability of the employer to pay the compensation and benefits provided for in this act. The amount of such insurance shall be fixed by the board for each ensuing fiscal year during which said employer shall engage in his said employment, and shall remain subject to the provisions of Compensation Plan No. 2, and for the purpose of fixing such amount of said insurance, the said board may make all reasonable and necessary investigation, and the said employer shall furnish to such board all information which it may require.

Policies to Contain What.

Section 35. (c) All policies insuring the payment of compensation under this act must contain a clause to the effect that as between the employee and the insurer the notice to, or knowledge of the occurrence of the injury on the part of the insured shall be deemed notice or knowledge, as the case may be, on the part of the insurer; that jurisdiction of the insured for the purpose of this act shall be jurisdiction of the insurer; and that the insurer shall, in all things, be bound by and subject to the awards, orders, judgments, or decrees rendered against such insured.

Agreement to be Contained in Policies of Insurance.

Section 35. (d) No such policy shall be issued unless it contains the agreement of the insurer that it will promptly pay to the person entitled

to compensation all the installments of compensation or other payments in this act provided for and that the obligation shall not be affected by any default of the insured after the injury, or by any default in the giving of any notice required by such policy or by this act, or otherwise. Such agreement shall be construed to be a direct promise by the insurer to the person entitled to compensation.

Policies Made Subject to This Act—Form of Insurance.

Section 35. (e) Every policy for the insurance of the compensation herein provided for, or against liability therefor, shall be deemed to be made subject to the provisions of this act. No insurer shall enter into any such policy of insurance unless its form shall have been approved by the board, and as otherwise provided by law.

Renewals.

Section 35. (f) Every renewal of such policy shall be made and delivered to said board at least thirty days prior to the expiration of the expiring policy.

Deposits by Insurer With Board.

Section 35. (g) Within thirty days of the happening of an accident where death, or the nature of the injury renders the amount of future payments certain or reasonably certain, the insurer shall make a deposit as herein defined with the treasurer of the board for the protection and guaranty of the payment of such liability in such sum as the board may direct.

How Insurer Relieved from Liability.

Section 35. (h) Any insurer against whom liability may exist for compensation under this act may, with the approval of the board, be relieved therefrom by (1) depositing the present value or the estimated present value of the total unpaid compensation for which such liability exists, assuming interest at five per centum per annum, with the treasurer of the board; or (2) by purchasing an annuity within the limitations provided by law in any insurance company granting annuities and authorized to transact business in this state, subject to the approval of the board.

Cancellation of Insurance Policy.

Section 35. (i) No policy of insurance issued under the provisions of Compensation Plan No. 2 shall be canceled within the time limited for its expiration except upon thirty days' notice to the employer in favor of whom such policy is issued, and to the board, unless such policy sought to be canceled shall have been sooner replaced by other insurance.

Reports of Insurance Companies to Board.

Section 35. (j) Every insurance company transacting business under this act, shall, at the time and in the manner prescribed by the board, make and file with the board such reports of accidents as the board may require.

Policies to Contain Clause Agreeing to Do What—Approval or Change.

Section 35. (k) Every policy or contract insuring against liability for compensation under Compensation Plan No. 2 must contain a clause to the effect that the insurer shall be directly and primarily liable to and will pay directly to the employee or in case of death, to his beneficiaries, or major or minor dependents, the compensation, if any, for which the employer is liable. Every such policy shall at all times be subject to the approval,

change, or revision by the board, and shall contain the clauses, agreements, and promises required by this act.

Deposits Under Plan No. 2 as Security.

Section 35. (1) Any deposit made under the provisions of Compensation Plan No. 2 shall be held in trust by the treasurer of the board as security for the payment of the liability for which the deposit was made. Such deposit may be reduced from time to time with the permission of the board, as the payment of the liability of the insurer may reduce the amount required to be on deposit. Such deposit may be changed or renewed when desired by the depositor, by withdrawing the same, or any part thereof, and substituting other deposits therefor; upon proof of the final payment of the liability for which such deposit was made, any deposit remaining shall be returned to the depositor. All earnings made by such deposit shall be first applied upon any liability of the depositors and if no such liability exists, then such earnings shall upon demand be delivered to such depositor. The treasurer of the board and his bondsmen shall be liable for the value and safekeeping of such deposit, and shall at any time, upon demand of his bondsmen, the depositor, or the board, account for the same and the earnings thereof.

PART IV.

COMPENSATION PLAN No. 3.

What Necessary in Electing Plan No. 3.

Section 40. (a) Every employer, subject to the provisions of Compensation Plan No. 3, shall, in the manner and at the times herein specified, pay into the state treasury, in accordance with the following schedule, a sum equal to the percentage of his total annual pay-roll specified in this section; which said schedule is subdivided into classes, and the percentage of payments of premiums or assessments to be required from each of said classes is as follows:

Percentage of Pay-roll to be Paid in Under Plan.

Class One—Broom or brush manufacturing, without sawmill; theater stage employees; moving picture operators; electrotyping; engraving; lithographing; photo engraving; stereotyping; embossing; bookbinding; printing; jewelry manufacturing; not otherwise specified; sixty-five one hundredths of one per centum.

Class Two—Cloth, textile, and wool manufacturing, not otherwise specified; wharf employees, other than stevedores and longshoremen; eight-tenths of one per centum.

Class Three—Manufacturing alcohol, drugs, other than ammonia; candy, crackers, saddles, harness, leather novelties, mattresses, not including springs or wire, paint, varnish, wagons, buggies, carriages, sleighs, cutters; operation of tubs and steamboats; manufacturing roofing paper and articles of paper not otherwise specified, paper boxes, automobiles, motor trucks, hardware; working in rubber, not otherwise specified; manufacturing boots and shoes; manufacturing articles of and working in leather not otherwise specified; one and three-tenths per centum.

Class Four—Manufacturing cheese, condensed milk; operating creameries, manufacturing spices and condiments; paper-hanging; kalsomining; whitewashing; making willow baskets; setting tiles; mantles and marble

work, inside work only; making grease, lard, soap, tallow; inside plumbing work; installing heating systems; painting and decorating, inside work only; metal ceiling work; one and four-tenths per centum.

Class Five—Manufacturing glass; operating breweries, bottling works, grain warehouses, grain elevators; manufacturing articles of brass, copper, lead and zinc; operating machine-shops, not otherwise specified; lathing, plastering; canneries of meat, fruit, vegetables, or fish, not including can manufacturing; cutting stone or paving blocks, other than in quarries, with or without machinery; installing electrical apparatus inside; installing fire-alarm apparatus inside; covering boilers or steam-pipes; concrete laying in floors, street paving or sidewalks, not otherwise specified; laying asphalt and other paving not otherwise specified; including shop and yard; manufacturing canoes and row-boats; well-drilling; constructing and repairing of paving of bricks or blocks; one and five-tenths per centum.

Class Six—Operating of laundries with power, dyeing, bleaching, and cleaning works; manufacturing of furniture, show-cases, office and store furniture and fixtures; cabinet-making; manufacture of wire mattresses, bed-springs, wooden coffins, caskets, rough wooden boxes for coffins; building hothouses, working in foodstuffs, fruits, edible oils or vegetables, not otherwwise classified; operating flour-mills, chop-mills, feed-mills; one and six-tenths per centum.

Class Seven—Manufacturing wood fibreware; installing automatic sprinklers or ventilating systems; setting glass; erecting fireproof doors and shutters inside of buildings; operating tanneries, sugar factories; beveling glass; manufacturing peat fuel; building wooden stairs; manufacturing brick, including kilns and buildings and diggings in pits, brickettes, brooms with sawmills, earthenware, fire-clay, porcelain ware, pottery, tile, terra-cotta; brush-making with sawmills; one and eight-tenths per centum.

Class Eight—Manufacturing of ammonia; operating waterworks, gasworks; grading, either of streets or otherwise, or road-making, without blasting; construction of plank road, plank street or plank sidewalk; operating creosoting works, pile-treating works; treating ties or other timber products; plumbing, both at and away from the shop, including house connections, without blasting; construction of waterworks, gasworks and coke ovens, including laying of mains and connections, without blasting; one and nine-tenths per centum.

Class Nine—Manufacturing artificial ice; operating refrigerator plants, cold storage plants, foundries, packing-houses, including slaughtering; manufacturing agricultural implements, threshing machinery, traction engines, harvesting machinery; manufacturing asphalt; operating steam-heating and power-plants; manufacturing gas or gasoline engines; operating ferries; stone-crushing; not at quarries; boat or ship building, other than canoes or row-boats, without scaffolds; laying hot flooring compositions, not otherwise specified; operating stockyards; two per centum.

Class Ten—Operating paper-mills, pulp-mills, longshoring, stevedoring, manufacturing fertilizers; operating garbage works; incinerators, crematories, lime kilns or burners, no quarrying; installing boilers, steam engines, dynamos, machinery not otherwise specified; putting up belts for machinery; manufacturing barrels, kegs, pails, staves, tubs, excelsior, veneer, packing cases, sash, doors and blinds; operation and maintenance of interurban railways, without third rail; two and two-tenths per centum.

Class Eleven—Millwrighting, not otherwise specified; manufacturing building material, not otherwise specified; working in building material, not otherwise specified; two and one-quarter per centum.

Class Twelve—Operation of smelters; manufacturing of metallic coffins; manufacturing of iron or steel; boat or ship rigging; planing-mills, independent; cement manufacturing; operating blast furnaces; two and three-tenths per centum.

Class Thirteen—Street or road making, with blasting; manufacturing wood baskets, kindling wood, window and door screens, cordage and rope; manufacturing and refining oil; placing wires in conduits; two and four-tenths per centum.

Class Fourteen—Concentrating and amalgamating of ores; woodworking, not otherwise specified; operating gravel bunkers; hauling gravel; operating gravel pits; operating wood-saws; painting, exterior work; operating boiler-works; making steam shovels; boilers; shipwrighting; operating sawmills, lath-mills; bridge work factories; operation of and work in mines, other than coal; two and five-tenths per centum.

Class Fifteen—Operating rolling-mills; manufacturing tanks, not otherwise specified; erecting and repairing advertising signs; harvesting and storing of ice, including loading on cars; making and repairing of locomotives and railroad cars; cutting stone at stone-yards connected with quarries; boat or ship building with scaffolds; logging operations, with or without machinery; booming or driving logs, ties, or other timber products; operating shingle-mills; operating quarries; two and three-quarters per centum.

Class Sixteen—Operating dredges; construction of telephone and telegraph systems; construction of dams and reservoirs, electric light and power plants, water works and water systems; installing furnaces; constructing blast furnaces; sewer building, maximum depth of excavation at any point seven feet; operation and maintenance of steam railways, including logging railways, operating coal mines; three per centum.

Class Seventeen—Operating drydocks, including floating drydocks; ornamental metal work within buildings; electric railway construction, without rock work or blasting; railroad construction, including street and cable railways, without rock work or blasting; building canals, without rock work or blasting; installing freight or passenger elevators, operation of telephone and telegraph systems; making dredges; constructing drydocks; three and one-quarter per centum.

Class Eighteen—Carpenters not otherwise specified; constructing grain elevators, not metal framed; stump pulling with donkey-engines; steam, electric and cable railway construction, with rock work or blasting; construction of logging railways, with rock work or blasting; operation and maintenance of electric railways using third rail, and street railways, all systems, including electric and cable; operation and maintenance of electric light and power plants, including transmission systems and extensions of lines; electric systems, not otherwise specified; three and one-half per centum.

Class Nineteen—Pile-driving; clearing land with blasting; galvanized iron or tin works; marble work; fireproofing of buildings, by means of wire netting and concreting; cellar excavation, with or without blasting; three and three-quarters per centum.

Class Twenty—Constructing breakwaters, marine railways and jetties; installation and repair of electrical apparatus, not otherwise specified, outside work only; stamping of metal or tin; building trestles and tunnels other than mining; shaft sinking, not otherwise specified; four per centum.

Class Twenty-one—Moving safes, boilers, machinery; construction of tanks, water-towers, windmills, not metal frame; plumbers making house connections with blasting; roof work; slate work; stone work; stone setting; brick work construction, not otherwise specified; construction of canals, with rock work or blasting; bridge building, wooden; construction of floating docks; constructing chimneys of metal or concrete; four and one-half per centum.

Class Twenty-two—Excavations, not otherwise specified; laying of mains and connections, with blasting; sewer building, where maximum depth of excavation at any point exceeds seven feet; blasting, not otherwise specified; manufacturing fire works; five per centum.

Class Twenty-three—Erecting fire-escapes, fireproof doors and shutters outside of buildings; building concrete structures, not otherwise specified; concrete or cement work not otherwise specified; six per centum.

Class Twenty-four—Constructing iron or steel frame structures or parts; constructing and repairing steel frames and structures; subaqueous works; caisson works; six and one-half per centum.

Class Twenty-five—House-moving, house-wrecking; construction or repair of steeples; construction of brick chimneys; six and three-quarters per centum.

Class Twenty-six—Manufacturing powder, dynamite and other explosives, not otherwise specified; ten per centum.

Class Twenty-seven—Any employer and his employees engaged in non-hazardous work or employment, by their joint election, filed with and approved by the board, may accept the provisions of Compensation Plan No. 3. In such event, such employer and employees shall be known as Class Twenty-seven, the rate of assessment in which shall be one-half of one per centum.

Assessments When Employment Embraces Different Classifications.

Section 40. (b) If a single establishment or work comprises several occupations listed in section 40 (a) in different classifications, the assessment shall be computed according to the pay-roll of each occupation if clearly separable; otherwise an average rate of assessment shall be charged for the entire establishment, taking into consideration the number of employees and the relative hazards.

What Classifications Advisory Only and Subject to Rearrangement, etc.

Section 40. (c) The classification of hazardous occupations in section 40 (a) and the rates of premium or assessment therein fixed are advisory only, and the board is hereby given full power and authority to rearrange, revise, add to, take from, change, modify, increase, or decrease any classification or rate named in section 40 (a) as in its judgment or experience may be necessary or expedient; provided, that no change in the classification or rates prescribed in section 40 (a) shall be made effective prior to the end of the first fiscal year, and thereafter any changes so made shall not become effective until thirty days after the date of the order or decision of the board making such change except that in case of new industries, or

industries not enumerated in section 40 (a), the board shall have the right to make an immediate classification thereof and establish a rate therefor.

Intent and Purpose of Plan No. 3—Fund to be Paid for What Purpose Only —Accounts.

Section 40. (d) It is the intent and purpose of Compensation Plan No. 3 that each industry, trade, occupation, or employment coming under the provisions of said plan shall be liable and pay for all injuries happening to employees coming under the provisions of said plan, and that all funds collected by assessments as herein provided shall be paid into one common fund to be known as the Industrial Accident Fund, which fund shall be devoted exclusively to the payment of all valid claims for injuries happening in each industry, trade, occupation, or employment coming under the provisions of Compensation Plan No. 3; provided that accounts shall be kept with each industry, trade, occupation or employment in accordance with the foregoing classifications, or otherwise, as the board may direct, both as to receipts and disbursements, for the purpose of providing information and statistics necessary for determining any changes in such rates or classifications.

Initial Payment July 15, 1915.

Section 40. (e) There shall be collected from all classes as initial payment into the Industrial Accident Fund, on or before the fifteenth day of July, 1915, one-fourth of the premium of assessment for that fiscal year, and one-twelfth thereof at the first of each month beginning with October 1, 1915; provided, that if such fund shall have a sufficient balance on hand at the end of the first three months, or any month thereafter, to meet the requirements of the Industrial Accident Fund, no assessment shall be called for such month.

Manner and Time of Making Payments by Employers.

Section 40. (f) The first payment shall be collected upon the pay-roll of the months of April, May and June, 1915. At the end of each calendar year an adjustment of the account shall be made upon the basis of the actual pay-roll. Any shortage shall be made good within thirty days thereafter. Every employer who shall enter into business at any intermediate day shall make his payments in the same manner and upon the same basis before commencing operations; the amount of such payments shall be calculated upon his estimated pay-roll, and an adjustment shall be made on or before February 1st in the year following, in the manner above provided.

In Case of Default, Rate to be Advanced Twenty-five Per Cent.

Section 40. (g) Any employer who is in default in the observance of any order of the board, issued pursuant to the provisions of section 40 (a) to 40 (f) inclusive, shall, in addition to any other penalty provided by this act, be charged an advance of twenty-five per centum over the established rate, and such advanced rate shall continue and be in force until such employer shall have ceased to be in such default.

Changes in Classification of Risks to be Equalized.

Section 40. (h) Any change in classification of risks or premium rates, or any change caused by change in the class of work, occurring during the calendar year, shall be equalized by the board within thirty days after the end of such year in proportion to its duration in accordance with the schedules provided in this act.

Deficiency in Industrial Accident Fund.

Section 40. (i) If, at the end of any year, it shall be seen that the contribution to the Industrial Accident Fund by any class of industry shall be less than the drain upon such fund on account of that class, the deficiency shall be made good to the fund on the first day of February of the following year by the employers of that class in proportion to their respective payments for the previous year.

Amount to be Set Apart When Required Payment Reasonably Certain.

Section 40. (j) Upon the happening of an accident where death, or the nature of the injury renders the amounts of future payments certain or reasonably certain, the board shall forthwith cause the treasurer of the board to set apart out of the Industrial Accident Fund a sum of money, to be calculated on the basis of the maximum sum required to pay the compensation accruing on account of such injury, which will meet such required payments not exceeding, however, the sum of four thousand dollars for any one case.

Such Reserve to be Invested in Bonds or Securities Named—Making Good Deficiency.

Section 40. (k) The treasurer of the board shall invest such reserve in bonds of the United States, bonds of the state of Montana, or bonds of any county, city, or school district in the state of Montana, or any other security which may be approved by said board, and out of the same and its earnings shall be paid the monthly installments, and any lump sum then or thereafter arranged for the case. Any deficiency shall be made good out of, and any balance or overplus shall revert to the Industrial Accident Fund.

Treasurer to Keep Accounts of Segregations.

Section 40. (l) The treasurer of the board shall keep an accurate account of all such segregations of the Industrial Accident Fund, and upon direction of the board shall divert from the main fund any sums necessary to meet monthly payments, pending the conversion into cash of any security, and in such case shall repay the same out of the cash realized from the security.

Collection in Case of Default by Employer.

Section 40. (m) If any employer shall default in any payment to the Industrial Accident Fund, the sum due may be collected by an action at law in the name of the state, and such right of action shall be cumulative.

Injury Happening While Employer is in Default.

Section 40. (n) For any injury happening to any of his workmen during default in any payment to the Industrial Accident Fund, the defaulting employer as to such injury shall be considered as having elected not to come under the provisions of this act, except that he shall be and remain liable to pay to the Industrial Accident Fund the amount of such default, together with the penalty prescribed by section 40 (g).

Assignment of Cause of Action to State.

Section 40. (o) The person entitled to sue under the provisions of section 40 (n) shall have the option of proceeding by suit or taking under this act. If such person take under this act, the cause of action against the employer shall be assigned to the state for the benefit of the Industrial

Accident Fund. If such person shall elect to proceed against the defaulting employer, such election shall constitute a waiver of any right to compensation under the provisions of this act.

Prosecution or Settlement of Assigned Cause of Action.

Section 40. (p) Any cause of action assigned to the state under the preceding section may be prosecuted or compromised by the board in its discretion.

Application for Compensation Under Plan No. 3.

Section 40. (q) Where a workman is entitled to compensation under Compensation Plan No. 3, he shall file with the board his application therefor, together with the certificate of the physician who attended him, and it shall be the duty of such physician to lend all necessary assistance in making application for compensation and such proof of other matters as may be required by the rules of the board without charge to the workman.

Duty of Physician—Physician to be Paid Out of What Fund.

Section 40. (r) For a proper compliance with the provisions of the preceding section, the physician, after approval by the board, shall be paid out of the Industrial Administration Fund one and one-half dollars for each case.

Application in Case of Death.

Section 40. (s) Where death results from the injury, the parties entitled to compensation under Compensation Plan No. 3, or someone in their behalf, shall make application for the same to the board. The application must be accompanied with proof of death and proof of relationship, showing the parties entitled to compensation, certificate of the attending physician, if any, and such other proof as may be required by the rules of the board.

What Included in Computing Compensation in Hazardous Employment.

Section 40. (t) In computing the pay-roll, the entire compensation received by every workman employed in the hazardous occupations enumerated in this act, shall be included, whether it be in the form of salary, wage, piecework, overtime, or any allowance in the way of profit-sharing premium, or otherwise, and whether payable in money, board or otherwise.

Disbursements Out of Industrial Accident Fund—Employer to Pay Warrant.

Section 40. (u) Disbursements out of the Industrial Accident Fund shall be made by the treasurer of the board as the board may order. If at any time there shall not be sufficient money in the Accident Fund with which to pay any warrants drawn thereon, the employer, on account of whose workmen the warrant was drawn, shall pay the same, and upon his next contribution to such fund he shall be credited with the amount so paid with interest thereon at the rate of six per centum per annum from the date of such payment to the date upon which the next assessment becomes payable, and if the amount of the credit exceeds the amount of such assessment, he shall have a warrant upon such fund for the excess, and if said warrant be not paid for want of funds, it shall be credited to such employer and be applied upon succeeding assessments.

Earnings and Interest on Deposits—Treasurer to Make No Profit.

Section 40. (v) All earnings made by the Industrial Accident Fund by reason of interest paid for the deposit thereof, or otherwise, shall be credited to and become a part of said fund, and the making of profit, either directly or indirectly, by the treasurer of the board, or any other person, out of the use of the accident fund shall constitute a felony, and on conviction thereof shall subject the person making such profit to imprisonment in the State Penitentiary for a term not exceeding two years, or a fine not exceeding five thousand dollars, or both such fine and imprisonment, and the treasurer of the board shall be liable upon his official bond for all profits realized for any unlawful use of the said fund.

PART V.

SAFETY PROVISIONS.

Unsafe Places for Workmen Forbidden.

Section 50. (a) No employer shall construct, maintain, or operate, or cause to be constructed, maintained, or operated any place of employment that is not safe.

Removal of Safety Devices, etc., Forbidden.

Section 50. (b) No employee shall remove, displace, damage, destroy, or carry off any safety device or safeguard furnished and provided for use in any employment or place of employment, or interfere in any way with the use thereof by any other person, or interfere with the use of any method or process adopted for protection of any employee in such employment or place of employment, or fail or neglect to do anything reasonably necessary to protect the life and safety of himself and other employees.

Jurisdiction and Supervision of Board Over Employment and Places of Employment.

Section 50. (c) The board is vested with full power and jurisdiction over and shall have such supervision of every employment and place of employment in this state as may be necessary adequately to enforce and administer all laws and all lawful orders requiring such employment and place of employment to be safe and requiring the protection of the life and safety of every employee in such employment or place of employment.

Powers of Board Regarding Safety of Employees.

Section 50. (d) The board shall have power, in addition to other powers herein granted, by general or special orders, rules or regulations, or otherwise:

1. To declare and prescribe what safety devices, safeguards, or other means or methods of protection as are well adapted to render employees and places of employment safe.

2. To fix such reasonable standards and to prescribe, modify, and enforce such reasonable orders for the adoption, installation, use, maintenance, and operation of safety devices, safeguards, and other means and methods of protection, as may be necessary for the protection of the life and safety of employees.

3. To fix and order such reasonable standards for the construction, repair and maintenance of places of employment as shall render them safe.

4. To require the performance of any act necessary for the protection of life and safety of employees.

5. To declare and prescribe the general form of industrial accident reports the accidents to be reported and the information to be furnished in connection therewith, and the time within which such reports shall be filed. Nothing in this act contained shall be construed to prevent the board from requiring supplemental accident reports; provided, however, that where, by the laws of the state of Montana, the manner or method of carrying on any business, or the rules or regulations in relation thereto, or the character or kind of safety devices has been prescribed, no other or additional requirements shall be made by the board, but it shall be the duty of the board to see that the employer lives up to and obeys said laws.

Notice of Hearing for Purpose of Considering and Issuing General Safety Orders.

Section 50. (e) Upon the fixing of a time and place for the holding of a hearing for the purpose of considering and issuing a general safety order or orders, the board shall cause a notice of such hearing to be published in one or more daily newspapers of general circulation, published and circulated in the state. No defect or inaccuracy in such notice, or in the publication thereof shall invalidate any general order issued by the board after a hearing has been had.

Places Defined as Hazardous to be Inspected Once Each Year.

Section 51. (a) After July 1, 1915, every place of employment of a work or occupation defined by sections 4 (a), 4 (b), 4 (c), 4 (d), 4 (e), and 5 of this act to be hazardous, shall be inspected, at least once during each year, by an inspector or examiner appointed by the board. Such inspection shall be for the purpose of determining the condition and operation of such places of employment, as regards the safety of employees working therein, and the use of safeguards, safety appliances, and reasonably safe tools and appliances.

Report of Inspection.

Section 51. (b) A report of such inspection shall be filed in the office of the board and a copy thereof given the employer.

Certificate of Safety of Inspected Place.

Section 51. (c) Each place of employment inspected as provided in section 51 (a) and found in a satisfactory condition shall receive from the board, upon payment of the inspection fees hereinafter provided for, a certificate to that effect, which certificate must be prominently displayed, under glass, in one of the principal places of the establishment so inspected.

When Board may Order Safety Devices Installed.

Section 51. (d) If, after such inspection and report, thereof, to the board, it shall be found that any such place of employment is not constructed, maintained or operated as provided in this act, the board shall order the installation, use, maintenance and operation, within such reasonable time as the board may direct, of such safety devices, safeguards, and other means and methods of protection as may be necessary to reasonably insure the safety of the workmen employed therein, subject to the provisions of section 51 (e).

When Board or Inspector may Order Place of Employment Closed and Put in Safe Condition.

Section 51. (e) If after such inspection, the board or any inspector or examiner thereof, shall find such place of employment in such an unsafe condition as to constitute an immediate menace to the safety of the workmen employed therein, the board, or any inspector or examiner thereof, may order any such place of employment closed, or the work therein to cease, until such safety devices, safeguards, and other means and methods, or changes or removals, as may be ordered by the board, or any inspector or examiner thereof, shall have been installed, repaired, changed, or removed, and such place of employment put in such condition as will reasonably insure the safety of the workmen employed therein.

Fee for Annual Inspection to be Paid by Employer.

Section 52. (a) For each annual inspection made under the provisions of this section, the employer shall pay, at the time of such inspection, a fee of five cents for each one thousand dollars or fraction thereof of his annual pay-roll for the preceding year, provided, that no inspection fee under this section shall be less than five dollars.

Fees in Subsequent Inspections.

Section 52. (b) The fees for any subsequent or reinspection made during any year in which an annual inspection shall have been made, shall be:

Where the annual pay-roll for the preceding year shall have been not more than twenty-five thousand ($25,000) dollars, five ($5) dollars.

Where the annual pay-roll for the preceding year shall have been more than twenty-five thousand ($25,000) dollars, but not more than one hundred thousand ($100,000) dollars, ten ($10) dollars.

Where the annual pay-roll for the preceding year shall have been more than one hundred thousand ($100,000) dollars but not more than five hundred thousand ($500,000) dollars, twenty ($20) dollars.

Where the annual pay-roll for the preceding year shall have been more than five hundred thousand ($500,000) dollars but not more than one million ($1,000,000) dollars, forty ($40) dollars.

Where the annual pay-roll for the preceding year shall have been more than one million ($1,000,000) dollars, fifty ($50) dollars.

Inspection Fees and Fines to be Paid Monthly into What Fund.

Section 52. (c) All fees received by the board for inspection, or for subsequent or reinspection, and all fines imposed or collected for a violation of the safety provisions of this act shall be paid monthly to the State Treasurer who shall credit such payments to the Industrial Administration Fund.

Orders Concerning Places and Employments Found to be Unsafe.

Section 53. (a) Whenever the board shall find, that any employment or place of employment is not safe, or that the practice or means or methods of operation or processes employed or used in connection therewith are unsafe, or do not afford adequate protection to the life and safety of employees in such employments and places of employment, the board shall make and enter and serve such order relative thereto as may be necessary to render such employment or place of employment safe and protect the life and safety of employees in such employments and places of employment,

and may in said order direct that such additions, repairs, improvements or changes be made; and such safety devices, and safeguards be furnished, provided and used as are reasonably required to render such employment or places of employment safe, in the manner and within the time specified in such order.

Board may Grant Time Within Which to Comply With Any Order.

Section 53. (b) The board may, upon application of any employer or other person affected thereby, grant such time as may reasonably be necessary for compliance with any order, and any person affected by such order may petition the board for an extension of time, which the board shall grant if it finds such an extension of time necessary.

Board may Summarily Investigate Places Believed to be Unsafe.

Section 53. (c) Whenever the board shall learn, or have reason to believe that any employment or place of employment is not safe or is injurious to the welfare of any employee, it may summarily investigate the same, with or without notice or hearings, and enter and serve such order as may be necessary relative thereto.

Compliance With Orders, Directions, Rules, etc., Enjoined.

Section 53. (d) Every employer, employee and other person shall obey and comply with each and every requirement of every order, decision, direction, rule or regulation made or prescribed by the board, and shall do everything necessary or proper in order to secure compliance with, and observance of every such order, decision, rule, or regulation.

Act not to Deprive Any Other Public Corporation, Board or Department of Jurisdiction.

Section 53. (e) Nothing contained in this act shall be construed to deprive any other public corporation, board or department of any power or jurisdiction over or relative to any place of employment; provided, that whenever the board shall, by order, fix a standard of safety for employments or places of employment, such order shall, upon the filing by the board of a copy thereof with the secretary or clerk of any such public corporation to which, or within whose jurisdiction it may apply, establish a minimum requirement concerning the matters covered by such order, and shall be construed in connection with any local order relative to the same matter and to amend or modify any requirement in such local order not up to the standard of the order of the board.

Orders, Rules, Findings, etc., of Board as Evidence.

Section 53. (f) Every order of the board, general or special, its rules and regulations, findings or decisions shall be admissible in evidence in any prosecution for, or suit to prevent, the violation of any of the provisions of this act, and shall be presumed to be reasonable. This presumption is, however, a rebuttable presumption.

Board may Investigate Cause of All Industrial Accidents — Orders and Recommendations Concerning Same.

Section 53. (g) The board may investigate the cause of all industrial accidents occurring in any employment or place of employment, or directly or indirectly arising from, or connected therewith, resulting in personal injury or death; and the board shall have the power to make such orders or recommendations with respect to such accidents as may be just and

reasonable, provided that neither the order nor the recommendation of the board, nor any accident report filed with the board, shall be admitted as evidence in any action for damages, or any proceeding to recover compensation, based on or arising out of such injury or death.

When Rate upon Place may be Advanced Fifty Per Cent.

Section 53. (h) If, by reason of poor or careless management, or otherwise, any place of employment be unduly dangerous, in comparison with other like places of employment, and the employer operating the same shall not have complied with the safety provisions of this act, and such employer shall be under Compensation Plan No. 3, the board, in addition to any other penalty provided by this act, shall advance the rate upon such place of employment fifty per centum, and such advanced rate shall continue and be in force until such place of employment shall have ceased to be unduly dangerous in comparison with other like places of employment, and such employer shall have obtained a certificate of the inspector or examiner provided for herein.

Violation of Safety Provision a Misdemeanor.

Section 54. Every employer, employee, or other person, who either individually or acting as an officer, agent or employee of a corporation, or other person, violates any safety provisions contained in this act, or any part of any such provision, or who shall fail or refuse to comply with any such provision or any part thereof or who directly or indirectly, knowingly induces another so to do, is guilty of a misdemeanor.

Inspection of Mines Shall be Made by Whom—Fees.

Section 55. (a) Whenever in this act the inspection of mines is referred to, such inspection shall be made by the inspector of mines, or his deputy, and nothing in this act contained shall be construed as modifying or limiting in any way the duties required to be performed by the inspector of mines as may be otherwise provided by law; provided, however, that the inspector of mines shall collect and account for the fees herein prescribed for inspection or subsequent or reinspection.

Rules, Relating to Operation of Mines must be Concurred in by Mine Inspector.

No rule, regulation or requirement relating to the operation of mines within the state of Montana made by said board shall be lawful or valid unless the same shall be concurred in and approved by the state mine inspector, and shall have been within the power of the said state mine inspector, to make in the first instance.

Orders—Requirements of Inspector of Mines have What Force.

Section 55. (b) A copy of any order, direction or requirement of the inspector of mines shall be filed with the board and shall thereupon become and have all the force and effect of an order of the board, subject only to review by the court, as in this act provided.

Repealing Clause.

Section 56. All acts and parts of acts in conflict herewith are hereby repealed.

Act to Take Effect When.

Section 57. This act shall be in full force and effect from and after its passage and approval.

Approved March 8, 1915.

Editorial Notes.

Constitutionality of workmen's compensation acts. Ann. Cas. 1912B, 174; Ann. Cas. 1914B, 498.

What is accident arising out of and in course of employment within meaning of workmen's compensation act. Ann. Cas. 1913C, 4.

Who is "workingman" within meaning of workmen's compensation act. Ann. Cas. 1913C, 28.

Liability of state as employer within employers' liability or workmen's compensation act. Ann Cas. 1914B, 889.

Who is "dependent" within workmen's compensation act. Ann. Cas. 1913E, 480.

Meaning of "average weekly earnings" in workmen's compensation act. Ann. Cas. 1913D, 1024; Ann. Cas. 1914C, 186.

Provisions in statute respecting medical examination of workman. Ann. Cas. 1914C, 86.

Residence of beneficiary as affecting right to compensation under workmen's compensation act. Ann. Cas. 1912D, 862.

LIABILITY OF RAILROAD TO EMPLOYEES.

Chapter 29, Laws 1911, page 47.

"An act defining the liability of persons or corporations operating any railroad in this state, for injuries received by employees thereof, or in consequence of the death of any such employee, by reason of negligence, and to declare void, contracts restricting such liability."

Be it enacted by the Legislative Assembly of the State of Montana:

Liability for Death or Personal Injury.

Section 1. Every person or corporation operating a railroad in this state shall be liable in damages to any person suffering injury while he is employed by such person or corporation so operating any such railroad, or, in case of the death of such employee, instantaneously or otherwise, to his or her personal representative, for the benefit of the surviving widow or husband and children of such employee; and, if none, then of such employee's parents; and, if none, then of the next of kin dependent upon such employee, for such injury or death resulting in whole or in part from the negligence of any of the officers, agents, or employees of such person or corporation so operating such railroad in or about the handling, movement or operation of any train, engine or car, on or over such railroad, or by reason of any defect or insufficiency, due to its negligence, in its cars, engines, appliances, machinery, track, roadbed, works, boats, wharves or other equipment.

Contributory Negligence—Diminution of Damages.

Section 2. In all actions hereafter brought against any such person or corporation so operating such railroad, under or by virtue of any of the provisions of this act, the fact that the employee may have been guilty of contributory negligence shall not bar a recovery, but the damages shall be diminished by the jury in proportion to the amount of negligence attributable to such employee; provided, that no such employee who may be injured or killed shall be held to have been guilty of contributory negligence in any case where the violation by such person or corporation so operating such railroad of any statute enacted for the safety of employees contributed to the injury or death of such employee.

State of Montana

First Annual Report

—— OF THE ——

Industrial Accident Board

For the Twelve Months Ending June 30th

1916

Workmen's Compensation Act

In Effect July 1st, 1915

MEMBERS OF THE BOARD:

A. E. Spriggs, *Chairman* Wm. Keating, *State Auditor*

W. J. Swindlehurst, *Commissioner of Labor*

"SAFETY FIRST"

been stated if the new system costs the employers a trifle more than the old liability system, there can be no question that the new order of things is much more satisfactory than even the best form of the old method. This is due, in great measure, to the gratifying fact of the elimination of the "go-between." Whatever money the employer now pays out goes directly to the employes injured in his service, in its entirety, with the inevitable result that such a direct method creates a much better feeling and a closer relationship between the employer and his employe.

MONTANA LAW COMPARED WITH THAT OF OTHER STATES.

The Montana Act bears favorable comparison with the law in operation in any of the other states, containing as it does the best features existing in the acts of the majority of the states, especially California, Washington, Wisconsin, Nevada and Michigan. While the act differs in some respects from those adopted by other states, we believe that it is superior to most of them. One of the important characteristics which contributes towards its superiority is the fact that while it is elective, the conditions laid down for those who do not accept the law are so stringent and embarrassing that it practically means in effect that the law is compulsory.

Of the thirty-one states and two territories which now operate under Compesation Acts, twenty-four have adopted the elective form of law for private employers, while nine have selected compulsory laws. As the name implies, a compulsory law makes the scheme of compensation automatically binding alike upon all employers and employes, who may be engaged in hazardous occupations, while an elective law makes it possible for the employer to reject the compensation scheme provided and to elect to be governed by whatever rule of liability exists under the common law of the state where the operation is being conducted. In many states, the provisions of the elective law are of such a nature that the employer who fails to elect to operate under same is denied the defenses afforded by what is ordinarily termed "common law defenses." The Montana Act is especially arbitrary in this feature, and a private employer who fails to elect to operate under one of the three plans of compensation provided by the act, has not much standing in court in the event of being sued by an injured employee for damages. The Montana Act specifically states that:

> "In an action to recover damages for personal injury sustained by an employe in the course of his employment, or for death resulting from personal injury so sustained, it shall not be a defense: (1) that the employe was negligent, unless such negligence was wilfull; (2) that the injury was caused by the negligence of a fellow employe; (3) that the employe had assumed the risk inherent in, incident to, or arising out of his employment, or arising from the failure of the employer to provide and maintain a reasonably safe place to work, or reasonably safe tools, or appliances."

From this provision of the law, it can readily be seen that while the act is elective it is, to all intents and purposes actually compulsory.

Another important feature of the Montana Law is the provision which it carries providing for security to guarantee the compensation payments. There would be little advantage in an award of compensation carrying with it pecuniary relief to an injured workman or his dependent if the employer was insolvent. The method provided by the act, of paying the compensation consisting of 50% of the weekly wages received by the employe at the time of the accident, governed by the maximum and minimum provided in the act, which is payable monthly, extends in many cases for a long period of time, ranging from 150 weeks, in cases of partial disability, up to 400 weeks in cases of total disability, followed, in the latter case, by $5.00 a week during the remainder of the totally disabled employe's life. The element of risk ordinarily sustained by the injured employe would be that the employer, even though he be solvent at the time of the injury, might later on become unable to make or complete the payments in question. As a precaution against this, the law provides that all employers operating under Plan 1 of the act must furnish satisfactory proof of their financial ability to pay whatever compensation is likely to be charged against them, to the extent of filing with the Industrial Accident Board whatever guaranty or bonds, in the wisdom of the Board, the con-

ditions may justify. In the event the employer does not wish to furnish the bond required, then he must insure the risk with some insurance company authorized to do business in the state, or with the State Fund under Plan 3.

The Compensation Acts of eight states do not require the guaranteeing or insuring of payments of compensation, while in six states the Acts require the insurance of compensation in a state fund, to the exclusion of any and all other methods. The laws of ten states provide that private companies only shall have the right to issue compensation insurance, and have provided for the operation of a state fund, as well as insurance through the medium of private or stock companies. The above includes the two territories operating under Compensation Acts, as well as the thirty-one states having Compensation Laws.

Taken as a whole and considered from every angle that is applicable to Workmen's Compensation, it is doubtful if any state in the union is enjoying a better or more comprehensive Act than the one under which the employers and employes of this state are operating.

While there are undoubtedly some weak spots in the law, they are not of a nature to seriously menace the successful operation of the Act. In the minds of some, there is a question as to the sufficiency of the compensation awards; also some employers question the wisdom of the provisions defining what is "inherently hazardous occupations," and what is "non-hazardous." A few employes have raised the question of what they term the injustice of the two weeks waiting period during which time no compensation is paid. Others have called attention to the rather inconsistent provision of the law relating to amputations, with the suggestion that the "joint," as related to the point of amputation should not be the governing feautre, but that any portion or part of a member amputated should receive specific compensation, and that when the point of amputation occurs between joints that the amount of specific compensation should be in proportion; also, that disability should be paid for in addition to the specific amount for the loss of the member amputated; also, that permanent disfigurement and likewise permanent partial impairment should be compensatable; that impairment of earning power should be compensated for in proportion to the impairment, as compared to total disability; that the loss

of the use of a member should be equivalent to the amputation of same.

Members of the governing bodies of public corporations complain relative to what they term the ambiguity of the law in the matter of defining who are employes and who are employers, or officials. Taxpayers of the state, who are only indirectly concerned in the operation of the law, claim that the administration of the law might be made self sustaining, if the administration fund was made a sort of "residuary legatee" of all unmarried employes, which would necessarily mean that in cases of accidental death, where the decedent had no beneficiaries or dependents, a certain percentage, if not all, of the compensation which would otherwise be paid, should be turned into the administration fund. This would serve the double purpose of making the administration of the Act self supporting, and also prevent employers discriminating in favor of unmarried and alien employes, which has been done in other states having a law similar to this which releases the employer from the liability of compensation for the death of single men, without dependents, and unmarried aliens. Out of the 136 fatal accidents during the past year, 49 were without either beneficiaries or dependents, and the only compensation cost attending the same was the $75.00 funeral expense allowance. Another provision of the law that has come in for criticism is the rather indefinite provision of the Act relating to the first aid benefit of two weeks hospital and medical treatment, not exceeding $50.00 in amount, to be furnished by the employer when the employe is not a member of a hospital association. It is contended that this provision will lead to abuse by unscrupulous physicians, provided such a class of doctors exists in the state.

MEDICAL AND HOSPITAL SERVICE—FIRST AID.

During the preliminary steps, when the Law was being put into operation, a prominent member of the State Bar Association, in commenting on same, remarked that while the Act had eliminated the shyster lawyer, it had established the shyster doctor. This might be possible if this state was burdened with anything in the nature of "shyster doctors," but so far the experience of the Board justifies the conclusion that the members of the medical profession of the state are

Suspension of retirement salary during time of teaching thereafter by retired teacher.

Effect of returning to service of any teacher retired on account of infirmity.

Proviso limiting amount of quarterly deductions.

Retirement salary limited to one salary.

Local committees, etc., may supplement the retirement salary.

Defining effect of courts declaring any part of Act unconstitutional or conflicting.

Repealing clause.

Section 18. If any teacher retired under the provisions of this Act, shall be re-employed in the public schools of this or of any other state, such teacher's retirement salary shall not be paid for or during such period of employment; and if any teacher having qualified under Section 14 of this Act, returns to service in the public schools of the State and thereafter qualifies under this Act, there shall be deducted from the retirement salary payable to such teacher under the provisions hereof the amount of retirement salary theretofore actually received by such teacher under the provisions hereof, such amounts to be so deducted in equal quarterly installments until the whole amount so received shall have been deducted; provided, however, that the amount of such deductions to be made quarterly shall not exceed thirty-five dollars.

Section 19. No one shall be permitted to draw from the State, directly or indirectly, more than one retirement salary. Nothing in this Act shall be so construed, however, as to prevent local communities or bodies of teachers from supplementing the retirement salary received from the State.

Section 20. Should the courts declare any section of this Act unconstitutional or unauthorized by law or in conflict with any other provision of this Act, then such decision shall affect only the section or provision so declared to be unconstitutional or void, and shall not affect any other section or part of this Act.

Section 21. All Acts and parts of Acts in conflict with the provisions of this Act are hereby repealed.

Section 22. This Act shall be in full force and effect from and after its passage and approval.

Approved March 8, 1915.

CHAPTER 96.

"An Act providing for the protection and safety of workmen in all places of employment and for the inspection and regulation of places of employment in all inherently hazardous works and occupations; providing a schedule of compensation for injury to or death of workmen and methods of paying the same, and prescribing the liability of employers who do not elect to pay such compensation; establishing the industrial accident board, defining its powers and duties; and providing for a review of its awards."

Be it enacted by the Legislative Assembly of the State of Montana:

PART I.
GENERAL PROVISIONS.

Workmen's Compensation Act.

Section 1. (a) This Act shall be known and may be cited as the Workmen's Compensation Act. Part I shall contain those sections which have a general application to the whole of the Act and may be referred to as the "General Provisions;" Part II shall contain those sections which refer to Compensation Plan Number One; Part III shall contain those sections which refer to Compensation Plan Number Two; Part IV shall contain those sections which refer to Compensation Plan Number Three; Part V shall contain those sections which may be referred to as the "Safety Provisions."

What each part shall contain.

References to plan numbers to include what.

Section 1. (b) Whenever Compensation Plans Number One, Two, or Three, or the safety provisions of this Act shall be referred to, such reference shall also be held to include all other sections which are applicable to the subject matter of such reference.

References to "Compensation Provisions" shall include what.

Section 1. (c) The "Compensation Provisions" of this Act, whenever referred to, shall be held to include the provisions of Compensation Plans Number One, Two, or Three, and all other sections of this Act applicable to the same, or any part thereof.

Industrial Accident Board, consisting of whom.

Section 2. (a) There is hereby created a Board to consist of three members; the Commissioner of Labor and Industry shall be one member, the State Auditor shall be one member, and one member shall be appointed by the Governor, which board shall be known as the Industrial Accident Board, and shall have the powers, duties, and functions hereinafter conferred. The term of office of the appointed member of the board shall be for four years and until his successor shall have been appointed and qualified. He shall receive an annual salary of Four Thousand Dollars, payable monthly, and shall be the Chairman of the Board. The Board shall elect one of their number as Treasurer of the Board .

Term of office of appointed member.

Salary.

Election of treasurer.

Vacancies in board.

Removal of appointive member.

Section 2. (b) A vacancy in the office of the appointed member of the Board shall be filled in the same manner as the original appointment, but shall only be for the unexpired term of such vacancy. The appointed member shall not be removed except for cause, and after a hearing had before and a finding, made by the remaining members of the Board, and both of the remaining members of the board must concur in the removal of the appointed member.

Official bonds.

Section 2. (c) Each member shall, upon entering upon the duties of his office, execute to the State of Montana and file with the Secretary of State a bond in

the sum herein prescribed, executed by not less than four responsible sureties or by some surety company authorized to become sole surety on bonds in the State of Montana, such bond to be approved by the Governor, and conditioned that he will faithfully and impartially discharge the duties of his office. Such bonds shall be in addition to any other bonds required by law to be furnished.

Treasurer's bond.

Section 2. (d) The bond of the Treasurer of the Board shall be in a sum to be fixed by the Governor, not less than Twenty-five Thousand Dollars, ($25,000.00), nor more than One Hundred Thousand Dollars, ($100,000.00). The bonds of the members of the Board other than the Treasurer shall be in the sum of Ten Thousand Dollars, ($10,000.00).

Bond of other members.

No additional compensation to ex-officio members.

Section 2. (e) Neither the Commissioner of Labor and Industry, nor the State Auditor, shall receive any additional compensation for the duties imposed upon them by this Act.

Quorum.

Powers of members in case of vacancy.

Hearings may be had before whom.

Section 2. (f) A majority of the Board shall constitute a quorum for the transaction of any business. A vacancy on the Board shall not impair the right of the remaining members to perform all of the duties and exercise all the powers and authority of the Board. The act of the majority of the Board when in session as a Board shall be deemed to be the act of the Board, but any investigation, inquiry, or hearing which the Board has power to undertake or to hold, may be undertaken or held by, or before, any member thereof, or any examiner, or referee appointed by the Board for that purpose. Every finding, order, decision, or award made by any commissioner, examiner, or referee pursuant to such investigation, inquiry or hearing, when approved and confirmed by the Board and ordered filed in its office shall be deemed to be the finding, order, decision, or award of the Board.

Findings, orders, etc., by any commissioner, examiner or referee to be final, when.

Seal of board.

Section 2. (g) The Board shall have a seal bearing the following inscription: "Industrial Accident Board, State of Montana, Seal." The seal shall be affixed to all writs and authentications of copies of records, and to such other instruments as the Board shall direct. All courts shall take judicial notice of said seal.

Principal office and furnishings.

Section 2. (h) The Board shall keep its principal office in the capital of the state and shall be provided with suitable rooms, necessary office furniture, stationery, and other supplies. For the purpose of holding sessions in other places the Board shall have power to rent temporary quarters.

Temporary quarters.

Secretary: appointment, term of office, duties. Records to be kept.

Section 2. (i) The Board shall appoint a secretary who shall hold office at the pleasure of the Board. It shall be the duty of the secretary to keep a full and true record of all the proceedings of the Board; to issue all necessary processes, writs, warrants, and notices which the Board is required or authorized to issue, and generally to perform such other duties as the Board may prescribe.

Other assistants and employes.

Section 2. (j) The Board shall employ such assistants and other employees as it may deem necessary to carry out the provisions of this Act.

Compensation of officers and employes.

Terms of office and duties.

Section 2. (k) All officers and employees of the Board shall receive such compensation for their services as may be fixed by the Board, shall hold office at the pleasure of the Board, shall perform such duties as are imposed on them by law or by the Board.

Salaries to be paid monthly.

Approval and auditing of.

Section 2. (l) The salaries of members of the Board, secretary and every other person holding office or employment under the Board, as fixed by law or by the Board, shall be paid monthly after being approved by the Board upon claims therefor to be audited and approved by the State Board of Examiners.

Expenses to be paid from what fund.

Section 2. (m) All expenses incurred by the Board pursuant to the provisions of this Act, including the actual and necessary traveling and other expenses and disbursements of the members thereof, its officers and employees incurred while on business of the Board, either within or without the State, shall, unless otherwise provided in this Act, be paid from the Industrial Administration Fund, after being approved by the Board upon claims therefor to be audited and approved by the State Board of Examiners.

Blank forms, minute book, record book, etc.

Records to be kept where.

Reports and bulletins which may be published.

Section 2. (n) The Board shall cause to be printed such blank forms as it shall deem requisite to facilitate or promote the efficient administration of this Act. It shall provide a book in which shall be entered the minutes of all its proceedings, a book of record in which shall be recorded all awards made by the Board, and such other books, or records as it shall deem requisite for the purpose and efficient administration of this Act. All such records are to be kept in the office of the Board.

Section 2. (o) The Board shall have the power and authority to publish and distribute at its discretion from time to time, in addition to its annual report, such further reports, and bulletins covering its operations, proceedings, and matters relative to its work as it may deem advisable.

Fees.

Unauthenticated copies of papers and records.

Certified copies.

Section 2. (p) The Board shall have power and authority to charge and collect the following fees:

1. For copies of papers and records not required to be certified or otherwise authenticated by the Board, 15 cents for each folio; for certified copies of official documents and orders filed in its office, or of the evidence taken at any hearing, 20 cents for each folio.

Charges for publications.

Fees to be paid into what fund.

2. To fix and collect reasonable charges for publications issued under its authority.

3. The fees charged and collected under this section shall be paid monthly into the treasury of the State to the credit of the Industrial Administration Fund, and shall be accompanied by a detailed statement thereof.

Attorney General the legal adviser of board.

Section 2. (q) The Attorney General shall be the legal adviser of the Board and shall represent it in all proceedings whenever so requested by the Board or any member thereof.

Defenses excluded in personal injury action.

Negligence of employe not wilful.

Fellow servant

Assumption of risk.

Section 3. (a) In an action to recover damages for personal injuries sustained by an employe in the course of his employment, or for death resulting from personal injuries so sustained, it shall not be a defense; (1) That the employe was negligent, unless such negligence was wilful; (2) That the injury was caused by the negligence of a fellow employe; (3) That the employe had assumed the risks inherent in, incident to, or arising out of his employment, or arising from the failure of the employer to provide and maintain a reasonably safe place to work, or reasonably safe tools, or appliances.

Provisions of Sec. 3 (a) not to apply to domestic servants, farm laborers, etc.

Section 3. (b) The provisions of Section 3. (a) shall not apply to actions to recover damages for personal injuries sustained by household or domestic servants, farm or other laborers, engaged in agricultural pursuits, or persons whose employment is of a casual nature.

Employers who are not subject to liability for death or personal injury other than herein defined.

Rights of action abolished.

Section 3. (c) Any employer who elects to pay compensation as provided in this Act shall not be subject to the provisions of Section 3 (a), nor shall such employer be subject to any other liability whatsoever for the death of, or personal injury to any employe except as in this Act provided; and, except as specifically provided in this Act, all causes of action, actions at law, suits in equity, and proceedings whatever, and all statutory and common law rights and remedies for, and on account of such death of, or personal injury to, any such employe are hereby abolished; provided, that Section 3 (a) shall not apply to actions brought by an employe who has elected not to come under this Act, or by

Sec. 3 (a) not to apply to employes who elect not to come under Act, or his

his representatives, for damages for personal injuries, or death, against an employer who has elected to come under this Act.

Provisions of Act to be exclusive in what cases.

Section 3. (d) Where both the employer and employe have elected to come under this Act, the provisions of this Act shall be exclusive, and such election shall be held to be a surrender by such employer and such employe of their right to any other method, form, or kind of compensation, or determination thereof, or to any other compensation, or kind of determination thereof, or cause of action, action at law, suit in equity, or statutory or common law, right, or remedy, or proceeding whatever, for, or on account of, any personal injury to, or death of such employe, except as such rights may be hereinafter specifically granted; and such election shall bind the employe himself and in case of death shall bind his personal representative and all persons having any right or claim to compensation for his injury, or death, as well as the employer, and those conducting his business during liquidation, bankruptcy, or insolvency.

Except as hereinafter specifically granted. Election to bind whom.

Compensation Plan No. 3 exclusive, etc., when a public corporation or its contractor is the employer.

Payments by public corporations under the Act to be considered what.

Duty of governing body of such corporations.

Section 3. (e) Where a public corporation is the employer, or any contractor engaged in the performance of contract work for such public corporation, the terms, conditions and provisions of Compensation Plan Number Three shall be exclusive, compulsory, and obligatory upon both employer and employe. Any sums necessary to be paid under the provisions of this Act by any public corporation shall be considered to be ordinary and necessary expenses of such corporation, and the governing body of such public corporation shall make appropriation of and pay such sums into the accident or administration fund, as the case may be, at the times and in the manner provided for in this Act, notwithstanding that such governing body may have failed to anticipate such ordinary and necessary expense in any budget, estimate of expenses, appropriation, ordinance, or otherwise.

Employers engaged or to engage in haardous industries or occupations may elect to be bound by Act, when.

Such election to be in prescribed form and shall state what.

Section 3. (f) Every employer engaged in the industries, works, occupations, or employments in this Act specified as "hazardous" may on or before the 1st day of July, 1915, if such employer be then engaged in such hazardous industry, work, occupation, or employment, or at any time thereafter, or, if such employer be not so engaged on said date, may on or after thirty days before entering upon such hazardous work, occupation, or employment, or at any time thereafter, elect whether he will be bound by either of the Compensation Plans mentioned in this Act. Such election shall be in the form prescribed by the Board, and shall state whether such employer shall be bound by Compensation Plan Number

Posting and proof of notice of election.

One, or Compensation Plan Number Two, or Compensation Plan Number Three, and a notice of such election, with the nature thereof, shall be posted in a conspicuous place in the place of business of such employer, and a copy of such notice, together with an affidavit of such posting, shall be filed with the Board.

Every employe engaged in a hazardous occupation shall be bound by what plan.

Unless he elects not to be bound by any provision of Act.

Election by employe shall be in what form and served on whom.

Section 3. (g) Every employe in the industries, works, occupations or employments in this Act specified as "Hazardous" shall become subject to and be bound by the provisions of that plan of compensation which shall have been adopted by his employer, unless such employe shall elect not to be bound by any of the compensation provisions of this Act and until such employe shall have made such election. Such election shall be made by written notice in the form prescribed by the Board, served upon the employer, and a copy filed with the Board, together with the proof of such service.

Presumption when employer fails to make an election.

Exception.

An election once made shall bind an employer until what time.

Section 3. (h) If the employer shall fail to make the election herein provided for, at the time, and in the manner herein prescribed, such employer shall be presumed to have elected not to be bound by the provisions of either Compensation Plan Number One, or Compensation Plan Number Two, or Compensation Plan Number Three for that fiscal year, unless such employer shall elect to become subject to, or bound by this Act in the manner provided for such election in the first instance. After having once elected to be bound by one or the other of the Compensation Plans provided in this Act, such employer shall be bound by such election for said first fiscal year and each succeeding fiscal year, unless such employer shall, not less than thirty or more than sixty days prior to the end of any fiscal year, elect not to be bound by either of such Compensation Plans, after the expiration of said fiscal year or unless he shall elect to be bound for the succeeding fiscal year by a different Compensation Plan than the one by which he is then governed. Such election must be made in the manner provided for in reference to the first election of such employer under this Act.

How subsequent elections are to be made.

Act intends that the employer shall make his election before being bound.

Employe presumed to have elected to be bound by same plan.

Section 3. (i) It is the intention of this Act that any employer engaged in hazardous occupations as defined herein shall, before being bound by either of the Compensation Plans herein provided, elect to be so bound thereby, and that the employe shall be presumed to have elected to be the subject to, and bound by, the provisions of the particular plan which may have been adopted by his employer, unless such employe shall affirmatively elect not to be bound by this Act.

An employe may elect to come in after having elected not to be bound. Employer may elect to be bound during fiscal year, may come in at any time.

Election to bind both employer and employe during rest of year.

Section 3. (j) Any employe who has elected not to be bound by the provisions of this Act in the manner herein provided, may revoke such election and elect to come thereunder at any time. Any employer who has failed to elect to be bound by either one or the other of the Compensation Plans herein mentioned, may, at any time during any fiscal year, elect to be bound thereby, which said election shall be made as hereinbefore provided; but whenever any employer or employe shall have elected to come under the provisions hereof, such election, when it shall have been made, shall bind such employer and employe for the rest of the then fiscal year.

No compensation to be paid employe when employer has not elected to be bound by this Act.

Section 3. (k) No compensation shall be paid to any employe, whether such employe has elected to come under this Act or not, where his employer has failed to elect, and has failed to come under one or the other of the Compensation Plans herein provided.

Act intended to apply to all inherently hazardous occupations as enumerated in sub-section hereof.

Section 4. (a) This Act is intended to apply to all inherently hazardous works and occupations within this State, and it is the intention to embrace all thereof in Sections 4 (b), 4 (c), 4 (d), and 4 (e), and the works and occupations enumerated in said sections are hereby declared to be hazardous.

Construction work embracing enumerated occupations.

Section 4. (b) CONSTRUCTION WORK: Tunnels, bridges, trestles; sub-aqueous works, ditches and canals (other than irrigation without blasting), dock excavations, fire escapes, sewers, house moving, house wrecking, iron or steel frame structures or parts of structures, electric light, or power plants, or systems, telegraph or telephone systems; pile driving, steam railroads, steeples, towers or grain elevators, not metal framed; dry docks, without excavation; jetties, breakwaters, chimneys, marine railways, water works or water systems; electric railways, cable railways, street railways, with or without rock work or blasting; erecting fireproof doors or shutters; steam heating plants; blasting; tanks, water towers or wind mills, not metal framed; shaft sinking; concrete buildings; freight or passenger elevators; fireproofing of buildings; galvanized iron or tin work; gas works or systems; marble, stone or brick work; road-making, with or without blasting; roof work; safe moving; slate work; plumbing work, inside or outside; metal smokestacks or chimneys; excavations not otherwise specified; blast furnaces; street or other grading; advertising signs; ornamental work on buildings; ship or boat building or rigging, with or without scaffolding; carpenter work not otherwise specified; installation of steam boilers or engines; placing wires in conduits; installing dynamoes; putting up belts for machinery; marble, mantel, stone or

tile setting; metal ceiling work; mill or ship-wrighting; painting of buildings or structures; installation of automatic sprinklers; concrete laying in floors, foundations or street paving; asphalt laying; covering steam pipes or boilers; installation of machinery not otherwise specified; drilling wells, installing electrical apparatus or fire alarm apparatus in buildings; house heating or ventilating systems, glass setting; building hot houses; lathing, paper hanging, plastering, wooden stair building.

Operation, including

Section 4. (c) OPERATION (Including Repair Work) of logging, cable, electric, street, steam or other railroads; dredges; interurban electric railroads using third rail systems; electric light or power plants; quarries; telegraph systems; stone crushers; blast furnaces; smelters; coal mines, gas works; steamboats; tugs and ferries, mines other than coal; steam heating or power plants; grain elevators; laundries; water works, paper mills; pulp mills; garbage and fertilizer works.

Factories using power driven machinery, enumerated.

Section 4. (d) FACTORIES USING POWER DRIVING MACHINERY: Stamping tin metal; bridge work; railroad, car or locomotive making or repairing; cooperage; logging, with or without machinery; sawmills, shingle mills, staves, veneer, box, lath, packing cases, sash, doors, blinds, barrel, keg, pail, basket, tub, wooden ware or wooden fibre ware, rolling mills; making steam shovels or dredges; tanks, water towers, asphalt; building material not otherwise specified; fertilizer; cement, stone with or without machinery; kindling wood, masts or spars with or without machinery; canneries; metal stamping; creosoting works; excelsior; iron; steel; copper, zinc, brass, or lead articles or wares not otherwise specified; working in wood not otherwise specified; hardware, tile, brick, terra cotta, fire-clay, pottery, earthenware, porcelain ware; peat fuel, brickettes; breweries; bottling works; boiler works; foundries; machine shops not otherwise specified; cordage; working in foodstuffs, including oils, fruits and vegetables; working in wool, cloth, leather, paper, broom, brush, rubber or textiles not otherwise specified; making jewelry; making soap, tallow, lard, grease, condensed milk; creameries; printing, electrotyping, photo-engraving, engraving and lithographing, sugar factories.

Miscellaneous works, enumerated.

Section 4. (e) MISCELLANEOUS WORK: Operating stock yards, with or without railroad entry; packing houses; wharf operations; artificial ice and refrigerating or cold storage plants; tanneries; electric systems not otherwise specified; theatre stage employes, including moving picture machine operators; fire works manufacturing, powder works.

Hazardous occupations not enumerated or hereafter arising.

Section 5. If there be or arise any hazardous occupation or work other than hereinbefore enumerated, it shall become under this Act and its terms, conditions and provisions as fully and completely as if hereinbefore enumerated.

Meaning of words and phrases employed in Act.

Section 6. Unless the context otherwise required, words and phrases employed in this Act shall have the meanings hereinafter defined.

"Factories" defined.

Section 6. (a) "Factories" means undertakings in which the business of working at commodities is carried on with power driven machinery, whether in manufacture, repair, or change, and shall include the premises, yards, and plant of the concern.

"Workshop" defined.

Section 6. (b) "Workshop" means any plant, yard, premises, room or place where power driven machinery is employed and manual labor is exercised by way of trade or gain or otherwise in, or incidental to the process of making, altering, repairing, printing or ornamenting, finishing or adapting for sale, or otherwise, any article, or part of article, machinery, or thing, over which premises, room or place the employer of the person working therein has the right of access or control.

"Mill" defined.

Section 6. (c) "Mill" means any plant, premises, room, or place where machinery is used; any process of machinery, changing, altering, or repairing any article or commodity for sale, or otherwise, together with the yards and premises which are a part of the plant, including elevators, warehouses, and bunkers.

"Mine" defined.

Section 6. (d) "Mine" means any mine where coal, clay, ore, mineral, gypsum, or rock is dug or mined underground.

"Quarry" defined.

Section 6. (e) "Quarry" means an open cut from which coal is mined, or clay, ore, mineral, gypsum, sand, shale, gravel, or rock is cut or taken for manufacturing, building, or construction purposes.

"Engineering work" defined.

Section 6. (f) "Engineering work" means any work of construction, improvement, or alteration or repair of buildings, streets, highways, sewers, street railways, railroads, logging roads, interurban roads, harbors, docks, canals; electric, steam or water power plants; telegraph and telephone plants and lines; electric light and power lines, and includes any other work for the construction, alteration, or repair of which machinery driven by mechanical power is used.

"Reasonably safe place to work" defined.

Section 6. (g) "Reasonably safe place to work" means that the place of employment has been made as free from danger to the life or safety of the employe as the nature of the employment will reasonably permit.

Section 6. (h) "Reasonably safe tools and appliances" are such tools and appliances as are adapted to, and are reasonably safe for use for the particular purpose for which they are furnished, and shall embrace all safety devices and safeguards provided or prescribed by the "safety provisions" of the Act for the purpose of mitigating or preventing a specific danger.

"Employer" defined.

Section 6. (i) "Employer" means any person, firm, association, or corporation, and includes the state, counties, municipal corporations, cities under special charter and commission form of government, school districts, towns, or villages, and independent contractors, and shall include the legal representatives of a deceased employer.

"Employe" and "Workman" defined.

Section 6. (j) "Employe" and "Workman" are used synonymously, and means every person in this State, including a contractor other than "an independent contractor," who, after July first, 1915, is engaged in the employment of an employer carrying on or conducting any of the industries classified in Sections 4 (a), 4 (b), 4 (c), 4 (e) and 5 of this Act, whether by way of manual labor, or otherwise, or whether upon the premises or at the plant of such employer, or who is engaged in the course of his employment away from the plant of his employer; provided, however,

Injury to workman away from plant and caused by another not in same employ.

Shall elect remedy before action.

1. If the injury to a workman occurring away from the plant of his employer is due to the negligence or wrong of another not in the same employ, the injured workman, or, if death results from such injury, beneficiaries or dependents, as the case may be, shall elect whether to take under this Act or seek a remedy against such others; such election shall be made in advance of the commencement of the action.

Cause of action to be assigned to State, when.

2. If he take under this Act, the cause of action against such other shall be assigned to the State for the benefit of the Industrial Accident Fund, or the employer or insurer, as the case may be.

Prosecution or settlement of assigned cause of action.

3. Any such cause of action assigned to the State may be prosecuted, or compromised by the Board, in its discretion.

Waiver of right of compensation under Act in case of suit in court.

4. If such workman, his beneficiaries, or dependents, as the case may be, shall elect to proceed against the person responsible for the injury, such election shall constitute a waiver of any right to compensation under the provisions of this Act.

"Injury" to include death.

Section 6. (k) "Injury" means and shall include death resulting from injury.

"Beneficiary" defined.

Section 6. (l) "Beneficiary" means and shall include a surviving wife or husband and a surviving child or children under the age of sixteen years and an invalid

child or invalid children over the age of sixteen years, or, if no surviving wife or husband, then the surviving child or children under the age of sixteen years, and any invalid child or children over the age of sixteen years in whom shall vest a right to receive compensation under this Act.

"Major dependent" defined.

Section 6. (m) "Major dependent" means if there be no beneficiaries as defined in Section 6 (l), the father and mother of the survivor of them, if actually dependent to any extent upon the decedent at the time of his injury.

"Minor dependent" defined.

Section 6. (n) "Minor dependent" means if there be no beneficiary as defined in Section 6 (l), and if there be no major dependent as defined in Sections 6 (m), the brothers and sisters, if actually dependent upon the decedent at the time of his injury.

"Invalid" defined.

Section 6. (o) "Invalid" means one who is physically or mentally incapacitated.

"Child" defined, to include whom.

Section 6. (p) "Child" shall include a posthumous child, a step-child, a child legally adopted prior to the injury, an illegitimate child legitimized prior to the injury.

"Injury" or "injured" defined.

Section 6. (q) "Injury" or "injured" refers only to an injury resulting from some fortutious event, as distinguished from the contraction of disease.

The singular and plural include both.

Section 6. (r) Wherever the singular is used the plural shall be included, and wherever the plural is used the singular shall be included.

Masculine includes all genders.

Section 6. (s) Wherever the masculine gender is used, the feminine and neuter shall be included.

"Physician" to include "Surgeon."

Section 6. (t) The term "physician" shall include "surgeon" and in either case shall mean one authorized by law to practice his profession in this State.

"Week" defined.

Section 6. (u) "Week" means six working days, but includes Sundays.

"Wages" defined.

Section 6. (v) "Wages" mean the average daily wages received by the employe at the time of the injury for the usual hours of employment in a day, and overtime is not to be considered.

"Wife" or "Widow" defined.

Section 6. (w) "Wife" or "widow" means only a wife or widow living with, or legally entitled to be supported by the deceased at the time of the injury.

"Husband" or "Widower" defined.

Section 6. (x) "Husband" or "widower" means only a husband or widower incapable of supporting himself, and living with, or legally entitled to be supported by the deceased at the time of her injury.

"Board" defined.

Section 6. (y) "Board" means the Industrial Accident Board of the State of Montana.

"Commissioner" defined.

Section 6. (z) "Commissioner" means one of the members of the Industrial Accident Board.

"Appointed member of the Board" defined.

Section 6. (aa) "Appointed member of the Board" means that member of the Industrial Accident Board appointed by the Governor.

"Order" defined.

Section 6. (bb) "Order" shall mean and include any decision, rule, regulation, direction, requirement, or standard of the Board, or any other determination arrived at or decision made by such Board, excepting general or local orders as herein specified.

"General order" defined.

Section 6. (cc) "General order" shall mean and include such order made under the safety provisions of this Act as applies generally throughout the State to all persons, employments or places of employment, or employees working in such places of employment classed as hazardous in this Act.

"Local order" defined.

Section 6. (dd) "Local order" shall mean and include any ordinance, order, rule, or determination of any public corporation, or any order or direction of any other public official, board, or department upon any matter over which the Industrial Accident Board has jurisdiction.

"Pay-roll," "Annual pay-roll" and "Annual pay-roll of the preceding year" defined.

Section 6. (ee) "Pay-roll," "annual pay-roll," or "annual pay-roll for the preceding year," means the average annual pay-roll of the employer for the preceding calendar year, or, if the employer shall not have operated a sufficient or any, length of time during such calendar year, twelve times the average monthly pay-roll for the current year, provided that an estimate may be made by the Board for any employer starting in business where no average pay-rolls are available, such estimate to be adjusted by additional payment by the employer or refund by the Board, as the case may actually be on December 31st of such current year.

Estimate to establish pay-roll, how adjusted.

"Year" defined.

Section 6. (ff) "Year" unless otherwise specified, means calendar year. "Fiscal year" means the period of time between the first day of July and the 30th day of the succeeding June.

"Public corporation" defined.

Section 6. (gg) "Public corporation" means the State, or any county, municipal corporation, school district, city, city under commission form of government or special charter, town or village.

"Insurer" defined.

Section 6. (hh) "Insurer" means any insurance company authorized to transact business in this State insuring any employer under this Act.

"Casual employment" defined.

Section 6. (ii) "Casual employment" means employment not in the usual course of trade, business, profession, or occupation of the employer.

"The plant of the employer" shall include what.

Section 6. (jj) "The plant of the employer" shall include the place of business of a third person while the employer has access to, or control over such place of

business for the purpose of carrying on his usual trade, business, or occupation.

"An independent contractor defined.

Section 6. (kk) "An independent contractor" is one who renders service in the course of an occupation, representing the will of his employer only as the result of his work and not as to the means by which it is accomplished.

Who shall be included in computing compensation to children, brothers and sisters and invalid children.

Section 7. (a) In computing compensation to children and to brothers and sisters, only those under sixteen years of age, or invalid children over the age of sixteen years, shall be included, and, in the case of invalid children, only during the period in which they are under that disability (within the maximum time limitations elsewhere in this Act provided), after which payment on account of such person shall cease. Compensation to children, or brothers or sisters (except invalids) shall cease when such persons reach the age of sixteen years.

Compensation to children shall cease when.

When compensation to beneficiaries, major or minor dependents or widow shall cease.

Section 7. (b) If any beneficiaries or major or minor dependents of a deceased employe die, or if the widow or widower remarry, the right of such beneficiary or major or minor dependent, or such widow or widower, to compensation under this Act shall cease.

Compensation shall not be paid to non-resident major or minor dependents.

Section 8. (a) No compensation under this Act, except as otherwise provided by treaty, shall be paid to any major or minor dependents not residing within the United States at the time of the injury to the decedent.

No compensation to be paid to any beneficiary not residing in United States in excess of, what amount.

What non-resident aliens shall not receive benefits.

Section 8. (b) Except as otherwise provided by treaty, no compensation in excess of fifty per centum of the compensation provided in this Act, shall be payable to any beneficiary not residing within the United States at the time of the injury to the decedent; provided, however, that no compensation shall be allowed to any non-resident, alien beneficiary who is a citizen of a government having compensation law which excludes citizens of the United States, either resident or non-resident, from partaking of the benefit of such law in the same degree as herein extended to non-resident beneficiaries.

Sec. 8 (b) not to prevent what.

Section 8. (c) Nothing in Section 8 (b) shall prevent the compromise of any sums due a beneficiary not residing in the United States at the time of the injury to the decedent for a sum less than fifty per centum of the compensation provided in this Act, upon the approval of the Board of such compromise settlement.

No compensation to be paid to non-resident beneficiaries until when.

Section 8. (d) Before payment of compensation to a beneficiary not residing within the United States, satisfactory proof of such relationship as to constitute a beneficiary under this Act shall be furnished by such beneficiary duly authenticated under seal of an officer of a court of law in the country where such beneficiary

resides, at such times and in such manner as may be required by the Board. And such proof shall be conclusive as to the identity of such beneficiary, and any other claim of any other person to any such compensation shall be barred from and after the filing of such proof.

Proofs to be conclusive of what facts.

Section 9. (a) Payment of compensation to a beneficiary not residing within the United States may be made to any plenipotentiary, or consul or consular agent within the United States, representing the country in which such non-resident beneficiary resides, and the written receipt of such plenipotentiary, or consul, or consular agent shall acquit the employer, the insurer, or the Board, as the case may be.

Payment to non-resident beneficiaries may be made to whom.

Effect of receipts of such officer.

Section 9. (b) Where payment is due to a child under sixteen years of age, or to a person adjudged incompetent, the same shall be made to the parent, or to the duly appointed guardian as the case may be, and the written receipt of such parent or guardian shall acquit the employer, the insurer, or Board, as the case may be. In other cases, payment shall be made to the person entitled thereto, or to his duly authorized representative.

When compensation may be paid to the parent or guardian.

Effect of their receipts.

Section 10. (a) In case of personal injury or death, all claims shall be forever barred unless presented within six months from the date of the happening of the accident.

Claims must be presented within what time.

Section 10. (b) No limitations of time, as provided in this Act, shall run as against any injured workman who is mentally incompetent and without a guardian, or an injured minor under sixteen years of age who may be without a parent or guardian. A guardian in either case may be appointed by any court of competent jurisdiction, in which event the period of limitation, as provided in Section 10 (a), shall begin to run on the date of the appointment of such guardian, or when such minor arrives at the age of sixteen years.

Time limitation shall not run against whom.

A guardian may be appointed and limitation shall then begin to run.

Section 11. (a) Where any employer procures any work to be done, wholly or in part for him, by a contractor other than an independent contractor, and the work so procured to be done is a part or process in the trade or business of such employer, then such employer shall be liable to pay all compensation under this Act to the same extent as if the work were done without the intervention of such contractor. And the work so procured to be done shall not be construed to be "casual employment."

Employer shall be liable when he lets work to be done by a contractor other than an independent contractor.

Section 11. (b) Where any employer procures work to be done as specified in Section 11 (a), such contractor and his employes shall be presumed to have elected to come under that plan of compensation adopted by the

Presumption when employer lets work by contract.

employer, unless they shall have otherwise elected, as provided herein.

Section 11. (c) Where any employer procures any work to be done, wholly or in part for him, by a contractor, where the work so procured to be done is casual employment as to such employer, then such contractor shall become the employer for the purposes of this Act.

When contractor performing casual employment becomes the employer.

Section 11. (d) Where any employer procures any work to be done, payment for which is to be made in property other than money or its equivalent, and the value of which property is speculative or intangible, the wages of the employes receiving such compensation shall be determined by the Board in accordance with the going wage for the same or similar work in the district or locality where the same is to be performed; provided, however, that where an employer procures any work to be done by any contractor, or through him by a sub-contractor, the payment for which is to be made in property other than money or its equivalent, and the value of which property is speculative or intangible, then and in that event, the employer shall not be liable for compensation but such liability shall fall upon the contractor or sub-contractor as the case may be.

When work is to be paid for in property other than money, how wages are to be determined.

When pay same and work is being done by a contractor.

Section 12. (a) If an injured employe dies and the injury was the proximate cause of such death, then the beneficiary, or the major or minor dependents of the deceased, as the case may be, shall receive the same compensation as though the death occurred immediately following the injury, but the period during which the death benefit shall be paid shall be reduced by the period during, or for which compensation was paid for the injury.

Compensation when injury the proximate cause of death.

Section 12. (b) If the employe shall die from some cause other than the injury, there shall be no liability for compensation after his death.

If employe die from some cause other than the injury.

Section 12. (c) The question as to who constitutes a beneficiary, or a major or minor dependent, shall be determined as of the date of the happening of the accident to the employe, whether death shall immediately result therefrom or not.

How question as to who constitutes a beneficiary or a major or minor dependent shall be as of what date.

Section 13. (a) Whenever in case of injury the right to compensation under this Act would exist in favor of any employe, he shall, upon the written request of his employer or the insurer, submit from time to time, to examination by a physician, who shall be provided and paid for by such employer or insurer, and shall likewise submit to examination, from time to time, by any physician selected by the Board, or any member or examiner, or referee thereof.

When employe shall submit to examinations by a physician.

Requests or orders for examination.

Section 13. (b) The request or order for such examination shall fix a time and place therefor, due regard being had to the convenience of the employe and his physical condition and ability to attend at the time and place fixed. The employe shall be entitled to have a physician, provided and paid for by himself, present at any such examination. So long as the employe, after such written request shall fail or refuse to submit to such examination, or shall, in any way obstruct the same, his right to compensation shall be suspended. Any physician employed by the employer, the insurer, or the Board, who shall make or be present at any such examination may be required to testify as to the results thereof.

Rights of employe at such examination.

Failing or refusing to submit to examination.

Physician may be required to testify.

Provisions of Sec. 16 (f) may be waived by mutual agreement.

Section 14. (a) Nothing in this Act shall be construed as preventing employers and workmen from waiving the provisions of Section 16 (f) of this Act, and entering into mutual contracts or agreements providing for hospital benefits and accommodations to be furnished to the employe.

Hospital contracts shall provide what.

Section 14. (b) Such hospital contract or agreements must provide for medical, hospital, and surgical attendance for such employe for sickness contracted during the employment, except venereal diseases and sickness as a result of intoxication, as well as for injuries received arising out of and in the course of the employment.

Limit to hospital assessments.

Section 14. (c) No assessment of employes for such hospital contracts or benefits shall exceed $1.00 per month for each employe, except in cases where it shall appear to the satisfaction of the Board, after a hearing had for that purpose that the actual cost of such service exceeds the said sum of $1.00 per month, and any such finding of the Board may be modified at any time when justified by a change of conditions, or otherwise, either upon the Board's own motion, or the application of any party in interest.

No employer shall make a profit in hospital agreements.

Section 14. (d) No profit, directly or indirectly, shall be made by any employer as a result of such hospital contract or assessments. It is the purpose and intent of this Act to provide that where hospitals are maintained by employers such hospitals shall be no more than self-supporting from assessment of employes, and that where hospitals are maintained by other than the employer, all sums derived by assessment of employes shall be paid in full to such hospital without deduction by the employer.

Board to have supervision of hospitals maintained in part by assessments of workmen.

Section 14. (e) Each and every hospital maintained wholly or in part by payments from workmen, which furnishes treatment and services to employes for sickness and injury, as provided in this Act, shall be under the

supervision of the Board as to the services and treatment rendered such employes, and shall, from time to time, make reports of such services, attendances, treatments, receipts and disbursements as the Board may require.

Hospital reports.

Neither employer, insurer or Board liable for treatment, care or malpractice in case of contract hospital services.

Section 14. (f) Neither an employer, an insurer, nor the Board, shall be liable in any way for any act in connection with the treatment or care, or malpractice in treatment or care, of any sickness or injury sustained by an employe, or the beneficiary of any hospital contract, where such act or treatment or malpractice in treatment is caused, or alleged to have been caused, by any physician, hospital, or attendant furnished by such employer, insurer, or the Board. In any action for malpractice arising out of the operations of this Act the merits of such action shall be investigated by the Industrial Accident Board and the finding of the Board in relation thereto shall be filed with the Clerk of the Court in which such action is pending.

In actions for malpractice Board to investigate and file findings where.

Questions of law in certain actions.

Section 15. In any action to recover damages for any act connected with the treatment or care, or malpractice in treatment or care, of any sickness of, or injury sustained by an employe, the question of whether or not due care was given by the defendants shall be a question of law for the Court.

Who shall be liable for injuries under the different plans of this Act, and in what amounts.

Section 16. Every employer who shall become bound by and subject to the provisions of Compensation Plan Number One, and every employer and insurer who shall become bound by and subject to the provisions of Compensation Plan Number Two, and the Industrial Accident Fund where the employer of the injured employe has become bound by and subject to the provisions of Compensation Plan Number Three, shall be liable for the payment of compensation in the manner and to the extent hereinafter provided to an employe who has elected to come under this Act and who shall receive an injury arising out of and in the course of his employment, or, in the case of his death from such injury, to his beneficiaries, if any; or, if none, to his major dependents, if any; or, if none, to his minor dependents, if any.

Compensation for an injury producing temporary total disability.

Section 16. (a) For an injury producing temporary total disability, fifty per centum of the wages received at the time of the injury, subject to a maximum compensation of ten dollars per week and a minimum compensation of six dollars per week; provided, that if at the time of injury the employe received wages of less than six dollars per week, that he shall receive the full amount of such wages per week. Such compensation shall be paid during the period of disability, but not, however, in any event, exceeding 300 weeks.

To be paid during what period.

For total disability, permanent in character.

Section 16. (b) For an injury producing total disability, permanent in character, fifty per centum of the wages received at the time of the injury, subject to a maximum compensation of ten dollars per week and a minimum compensation of six dollars per week; provided, that if at the time of the injury the employe received wages of less than six dollars per week, then he shall receive the full amount of such wages per week. Such compensation shall be paid during the period of disability, not exceeding 400 weeks, after which time payments shall continue during disability at the rate of five dollars per week.

To be paid during what period.

For partial disability.

Section 16. (c) For an injury producing partial disability, one-half of the difference between the wages received at the time of the injury and the wages which such injured employe is able to earn thereafter, not exceeding, however, the difference between the wages which the injured employe is able to earn after the injury and the maximum compensation allowed in cases of total disability; provided, however, that such a sum shall be paid as compensation in each case, which, when added to the wages which the injured employe is able to earn after the injury, will equal the minimum compensation allowed in cases of total disability. Such compensation shall be paid during the period of disability, not exceeding, however, 150 weeks in cases of permanent partial disability and 50 weeks in cases of temporary partial disability.

Proviso.

To be paid during what period.

For injury causing death.

Section 16. (d) Where the injury causes death, fifty per centum of the wages received at the time of the injury, to his beneficiaries, if any, residing within the United States at the date of the happening of the injury, or, if residing outside of the United States, fifty per centum of such compensation, or, if none, then forty per centum of the wages received at the time of the injury to his major dependents, if any, if residing in the United States at the date of the happening of the injury, or, if none, then thirty per centum of the wages received at the time of the injury, to his minor dependents, if any, residing within the United States at the date of the happening of the injury, subject to a maximum compensation of ten dollars per week, and a minimum compensation of six dollars per week, for a period not exceeding 400 weeks; provided, that if at the time of the injury the employe received wages of less than six dollars per week, the full amount of such wages per week for a period of not exceeding 400 weeks.

For what period of time. Proviso.

Additional compensation in case death occurs within six months.

Section 16. (e) There shall be paid, in addition to other compensation, if death occurs within six months of the happening of the injury, the reasonable burial ex-

penses of the employe, not exceeding $75.00. If the employe leaves no beneficiaries, or major, or minor dependents, this shall be the only compensation.

Medical and hospital services to be furnished.

Section 16. (f) During the first two weeks after the happening of the injury, the employer or insurer, or the accident fund, as the case may be, shall furnish reasonable medical and hospital services and medicines as and when needed, in an amount not to exceed fifty dollars in value, except as otherwise in this Act provided, and when the employer is a party to a hospital contract, unless the employe shall refuse to allow them to be furnished.

No compensation to be paid during first two weeks.

Section 16. (g) No compensation shall be allowed or paid during the first two weeks of any injury, except as may be required by the provisions of Section 16 (f).

Compensation to run consecutively as set forth in this section.

Section 16. (h) Compensation for all classes of injuries shall run consecutively and not concurrently, and as follows: First, the two weeks medical and hospital services and medicines as provided in Section 16 (f), unless the employe is a contributor to a hospital fund, as otherwise in this Act provided; after the first two weeks, compensation as provided in Section 16 (a), or 16 (b), or 16 (c); following, either or none of the above, compensation as provided in Section 16 (i); following any or either, or none of the above, if death results from the accident within six months of the date of the injury, burial expenses as provided in Section 16 (e); following which, compensation to beneficiaries, if any; following which, if no beneficiaries, compensation to major dependents; following which, if no beneficiaries and no major dependents, compensation to minor dependents, if any. Provided, that no compensation shall be paid to a major or minor dependent who does not reside within the United States, or who did not reside within the United States at the date of the happening of the injury. Compensation due to beneficiaries shall be paid to the surviving spouse, if any, or if none, then divided equally among or for the benefit of the children. Compensation due to major dependents, where there be more than one, shall be divided equally among them.

No compensation to major or minor dependents not residing in United States.

To be paid to whom.

Compensation to be paid in case of following injuries in lieu all other except that provided in Sec. 16 (f).

Section 16 (i) In case of the following specified injuries, the compensation, in lieu of any other compensation provided by this Act, other than that provided in Section 16 (f), unless the employe is a contributor to a hospital fund as otherwise in this Act provided, shall be fifty per centum of the wages received at the time of the injury, subject to a maximum compensation of ten dollars per week and a minimum compensation of six dollars per week; provided, that if, at the time of the injury the employe received wages of less than six dollars per week,

then he shall receive the full amount of such wages per week, and shall be paid for the following periods:

For the loss of:

One arm at or near shoulder	200 weeks
One arm at the elbow	180 weeks
One arm between the wrist and elbow	160 weeks
One hand	150 weeks
One thumb and the metacarpal bone thereof	60 weeks
One thumb at the proximal joint	30 weeks
One thumb at the second distal joint	20 weeks
One first finger and the metacarpal bone thereof	30 weeks
One first finger at the proximal joint	20 weeks
One first finger at the second joint	15 weeks
One first finger at the distal point	10 weeks
One second finger and the metacarpal bone thereof	30 weeks
One second finger at the proximal joint	15 weeks
One second finger at the second joint	10 weeks
One second finger at the distal joint	5 weeks
One third finger and the metacarpal bone thereof	20 weeks
One third finger at the proximal joint	12 weeks
One third finger at the second joint	8 weeks
One third finger at the distal joint	4 weeks
One fourth finger and the metacarpal bone thereof	12 weeks
One fourth finger at the proximal joint	9 weeks
One fourth finger at the second joint	6 weeks
One fourth finger at the distal joint	3 weeks
One leg at or so near the hip joint as to preclude the use of an artificial limb	180 weeks
One leg at or above the knee where stump remains sufficient to permit the use of an artificial limb	150 weeks
One leg between the knee and ankle	140 weeks
One foot at the ankle	125 weeks
One great toe with the metetarsal bone thereof	30 weeks
One great toe at the proximal joint	15 weeks
One great toe at the second joint	10 weeks
One toe other than the great toe with the metetarsal bone thereof	12 weeks
One toe other than the great toe at proximal joint	6 weeks
One toe other than the great toe at second or distal joint	3 weeks
One eye by enucleation	120 weeks
Total blindness of one eye	100 weeks

What shall constitute total disability.

The loss of both hands, or both arms, or both feet, or both legs, or both eyes, or any two thereof, in the absence

of conclusive proof to the contrary shall constitute total disability, permanent in character.

What workman must clearly prove in case of hernia.

Section 16. (j) A workman in order to be entitled to compensation for hernia must clearly prove: (1) That the hernia is of recent origin, (2) that its appearance was accompanied by pain, (3) that it was immediately preceded by some accidental strain suffered in the course of the employment, and (4) that it did not exist prior to the date of the alleged injury. If a workman, after establishing his right to compensation for hernia as above provided, elects to be operated upon, a special operating fee of not to exceed fifty dollars shall be paid by the employer, the insurer, or the Board, as the case may be. In case such workman elects not to be operated upon, and the hernia becomes strangulated in the future, the results from such strangulation will not be compensated.

Fee in case workman elects to be operated on for hernia.

In case of strangulated hernia.

Paralysis of limbs to be considered the loss of such limbs.

Section 16. (k) For the purpose of Section 16 (i), the complete paralysis of an arm, hand, foot, or leg shall be considered the loss of such member. For the purpose of Section 16 (i), the complete paralysis of both arms, both hands, both feet, or both legs, or any two of them, shall be considered the loss of such members.

Adjustment of compensation in case of second or further injuries.

Section 16. (l) Should a further accident occur to a workman who is already receiving compensation hereunder, or who has been previously the recipient of a payment or payments under this Act, his further compensation shall be adjusted according to the other provisions of this Act, and with regard to the combined effect of his injuries and his past receipt of compensation.

Compensation when changes in degree of injury takes place or is discovered.

Section 16. (m) If aggravation, diminution or termination of disability takes place, or be discovered, after the rate of compensation shall have been established, or compensation terminated in any case, where the maximum payments for disabilities as provided in this Act have not been reached, such changes may be adjusted for future application of compensation in accordance with the provisions hereof, or, in a proper case, terminate the payments.

Payments to be made how.

Section 16. (n) All payments of compensation, as provided in this Act, shall be made monthly, except as otherwise provided herein.

Monthly payments may be converted into a lump sum.

Section 16. (o) The monthly payments provided for in this Act may be converted, in whole or in part, into a lump sum payment, which lump sum payment shall not exceed the estimated value of the present worth of the deferred payments capitalized at the rate of five per centum per annum. Such conversion can only be made upon the written application of the injured workman, his beneficiary or major or minor dependents, as the case

When can be so paid.

may be, and shall rest in the discretion of the Board, both as to the amount of such lump sum payment, and the advisability of such conversion.

There can be no assignment, attachment or garnishment of payments.

Section 17. (a) No payments under this Act shall be assignable, subject to attachment or garnishment, or be held liable in any way for any debts.

Liability under this Act, in case of bankruptcy, insolvency or failure, is a first lien upon what.

In case deposits not sufficient to pay the liability.

Section 17. (b) In case of bankruptcy, insolvency, liquidation, or the failure of an employer or insurer to meet any obligations imposed by this Act, every liability which may be due under this Act shall constitute a first lien upon any deposit made by such employer or insurer, and if such deposit shall not be sufficient to secure the payment of such liability in the manner, and at the times provided for in this Act, the deficiency shall be a lien upon all the property of such employer or insurer within this State, and shall be prorated with other lienable claims and shall have preference over the claim of any creditor or creditors of such employer or insurer except the claims of other lienors.

What agreements invalid.

Section 17. (c) No agreement by an employe to waive any rights under this Act for an injury to be received shall be valid.

Misrepresenting pay-roll.

Section 17. (d) Any employer who shall misrepresent to the Board the amount of a pay-roll upon which the premiums or assessments under Compensation Plan Number Three are to be levied, or upon which fees for factory inspection, subsequent inspection, or re-inspection, as elsewhere provided in this Act, are based, shall be liable to the State in ten times the amount of difference between the amount paid and the amount which should have been paid. Such liability may be recovered in a civil action brought in the name of the State. All sums collected under this section shall be paid into the fund to which the original payments were, or should have been credited.

Liability to State.

Action to recover.

Act not to apply to certain railroads.

Section 17. (e) The provisions of this Act shall not apply to any railroad engaged in interstate commerce, except that railroad construction work shall be included in and subject to the provisions of this Act.

Duplicate receipts paid for injuries to be filed monthly by employers and insurers under Plan One.

Statements of medical and expenditures. hospital

Section 17. (f) Every employer coming under the provisions of Compensation Plan Number One, and every insurer coming under the provision of Compensation Plan Number Two, shall, on or before the fifteenth day of each and every month, file with the Industrial Accident Board duplicate receipts for all payments made during the previous month to injured workmen or their beneficiaries or dependents; and statements showing the amounts expended during the previous month for medical, surgical and hospital services and for the burial of injured workmen.

Notice for claims for injuries other than death must be served within 60 days.

Statement in notice.

Actual knowledge by employer or agent equivalent to such service.

Section 17. (g) No claims to recover compensation under this Act, for injuries not resulting in death, shall be maintained unless, within sixty days after the occurrence of the accident which is claimed to have caused the injury, notice in writing, stating the name and address of the person injured, the time and the place where the accident occurred and the nature of the injury, and signed by the person injured, or some one in his behalf, shall be served upon the employer or the insurer; provided, however, that actual knowledge of such accident and injury on the part of such employer or his managing agent or superintendent in charge of the work upon which the injured employe was engaged at the time of the injury shall be equivalent to such service.

Employers and insurers required to file reports of every accident to employes.

Form and detail of such reports.

Section 17. (h) Every employer of labor, and every insurer is hereby required to file with the Board, under such rules and regulations as the Board may from time to time make, a full and complete report of every accident to an employe arising out of or in the course of his employment and resulting in loss of life or injury to such person. Such reports shall be furnished to the Board in such form and such detail as the Board shall from time to time prescribe, and shall make specific answers to all questions required by the Board under its rules and regulations, except, in case he is unable to answer any such questions, a good and sufficient reason shall be given for such failure.

Confidential information can be used how.

Section 17. (i) No information furnished to the Board by an employer or an insurer shall be open to public inspection, or made public except on order of the Board, or by the Board or a member of the Board in the course of a hearing or proceeding. Any officer or employe of the Board who, in violation of the provisions of this section divulges any information, shall be guilty of a misdemeanor.

American Experience Table of Mortality to be used when.

Section 17. (j) Whenever it is necessary to estimate the sum of money to set aside as a reserve in any case, the American Experience Table of Mortality shall be used.

Misdemeanor for any employer to deduct from wages any part of any premium.

Section 17. (k) It shall be unlawful for the employer to deduct or obtain any part of any premium required to be paid by this Act from the wages or earnings of his workmen, or any of them, and the making, or attempt to make any such deduction shall be a misdemeanor, except that nothing in this section shall be construed as prohibiting contributions by employes to a hospital fund, as elsewhere in this Act provided.

Hospital contributions permitted.

Hearings and investigations to be had under what rules, etc.

Section 18. (a) All hearings and investigations before the Board, or any member thereof, shall be governed by this Act and by rules of practice and procedure to be adopted by the Board, and in the conduct thereof neither the Board, nor any member thereof shall be bound by the technical rules of evidence. No informality in any proceedings, or in the manner of taking testimony shall invalidate any order, decision, award, rule or regulation made, approved, or confirmed by the Board.

Technical rules of evidence. Informality in proceedings shall not invalidate decisions.

Depositions may be taken.

Section 18. (b) The Board, or any member thereof, or any party to the action or proceeding may, in any investigation or hearing before the Board, cause the deposition of witnesses residing within or without the State to be taken in the manner prescribed by law for like depositions in civil actions in the districts courts of this State, and to that end may compel the attendance of witnesses and the production of books, documents, papers, and accounts.

Board. jurisdiction of Power and

Section 18. (c) The Board is hereby vested with full power, authority and jurisdiction to do and perform any and all things, whether herein specifically designated or in addition thereto, which are necessary or convenient in the exercise of any power, authority, or jurisdiction conferred upon it under this Act.

Power of Board to issue writs, processes, etc.

Section 18. (d) The Board and each member thereof shall have power to issue writs of summons, warrants of attachment, warrants of commitment, and all necessary process in proceedings for contempt in like manner and to the same extent as courts of record. The process issued by the Board, or any member thereof, shall extend to all parts of the State and may be served by any persons authorized to serve process of courts of record, or by any person designated for that purpose by the Board, or any member thereof.

Processes to extend throughout State and may be served by whom.

Fees for serving processes.

The person executing any such process shall receive such compensation as may be allowed by the Board, not to exceed the fees now prescribed by law for similar service and such fees shall be paid in the same manner as provided herein for the fees of witnesses.

Power to administer oaths, certify to official acts, issue subpoenas, etc.

Section 18. (e) The Board, and each member thereof, its secretary and referees, shall have the power to administer oaths, certify to all official acts, and to issue subpoenas for the attendance of witnesses and the production of papers, books, accounts, documents and testimony in any injury, investigation, hearing, or proceeding in any part of the State. Each witness who shall appear, by order of the Board, or any member thereof shall be entitled to receive, if demanded, for his attendance the same fees and mileage allowed by law to a wit-

Witness fees and mileage.

To be paid by whom.

ness in civil cases in the District Court, which amount shall be paid by the party at whose request such witness is subpoenaed, unless otherwise ordered by the Board. When any witness, who has not been required to attend at the request of any party, is subpoenaed by the Board, his fees and mileage may be paid from the funds appropriated for the use of the Board in the same manner as other expense of the Board are paid. Any witness subpoenaed, except one whose fees and mileage may be paid from the funds of the Board, may at the time of service demand the fee to which he is entitled for travel to and from the place at which he is required to appear, and one day's attendance. If such witness demands such fees at the time of service and they are not at that time paid or tendered, he shall not be required to attend before the Board, or a member thereof or referee, as directed in the subpoena.

What witnesses may demand fees in advance.

District Courts' power concerning production of testimony.

Section 18. (f) The District Court in and for the county in which any inquiry, investigation, hearing or proceeding may be held by the Board, or any member thereof, shall have the power to compel the attendance of witnesses, the giving of testimony and the production of papers, books, accounts and documents as required by any subpoena issued by the Board, or any member thereof. The Board, or any member thereof, before whom the testimony is to be given or produced, in case of the refusal of any witness to attend or testify or produce any papers required by such subpoena, may report to the District Court in and for the County, in which the proceeding is pending, by petition, setting forth that due notice has been given of the time and place fixed for the attendance of said witness, or the production of said papers, and that the witness has been summoned in the manner prescribed in this Act, and that the witness has failed and refused to attend, or produce the papers required by the subpoena before the Board or any member thereof in the case or proceeding named in the notice and subpoena, or has refused to answer questions propounded to him in the course of such proceedings, and ask an order of said court compelling the witness to attend and testify or produce said papers before the Board.

Board or members thereof may file petition in the court therefor, setting forth, what.

Duty of court thereupon.

The court, upon the petition of the Board, or any member of the Board, shall enter an order directing the witness to appear before the court at the time and place to be fixed by the court in such order not more than ten days from the date of the order, and then and there show cause why he had not attended or testified, or produced such papers before the Board. A copy of said order shall be served upon said witness. If it shall appear to the court

Service of order.

that said subpoena was regularly issued by the Board, or a member thereof, and regularly served, the court shall thereupon enter an order that said witness appear at the time and place fixed in said order, and testify or produce the required papers, and upon failure to obey said order, said witness shall be dealt with as for contempt of court. The remedy provided in this section is cumulative and shall not be construed to impair or interfere with the power of the Board, or a member thereof, to enforce the attendance of witnesses and the production of papers, and to punish for contempt, in the same manner and to the same extent as courts of record.

contempt of court, when.

The remedy is cumulative and must be construed, how.

Board's power to punish for contempt.

Section 18. (g) Copies of official documents and orders filed or deposited according to law in the office of the Board, certified by a member of the Board or by the secretary under the official seal of the Board to be true copies of the original shall be evidence in like manner as the originals.

Certified copies as evidence.

Section 18. (h) The costs and disbursements, incurred in any proceeding or hearing before the Board, or a member thereof, may be apportioned between the parties on the same or adverse sides in the discretion of the Board.

Apportionment of costs and disbursements.

Section 19. The books, records, and pay-rolls of the employer, pertinent to the administration of this Act, shall always be open to inspection by the Board or any duly authorized employe thereof, for the purpose of ascertaining the correctness of the pay-roll; the number of men employed, and such other information as may be necessary for the Board and its management under this Act. Refusal on the part of the employer to submit said books, records, and pay-rolls for such inspection shall subject the offending employer to a penalty of One Hundred Dollars for each offense, to be collected by civil action in the name of the State, and paid into the Industrial Administration Fund.

Books, records and pay-rolls of employers open to inspection by whom and for what purposes.

Refusal of employer to permit such inspection.

Penalty.

Section 20. (a) All proceedings to determine disputes or controversies arising under this Act shall be instituted before the Board, and not elsewhere, and heard and determined by them, except as otherwise in this Act provided, and the Board is hereby vested with full power, authority and jurisdiction to try and finally determine all such matters, subject only to review in the manner and within the time in this Act provided.

Jurisdiction of Board to hear and determine all disputes and controversies arising under Act.

Section 20. (b) All orders, rules, and regulations, findings, decisions, and awards of the Board in conformity with law shall be in force and shall be prima facie lawful; and all such orders, rules, and regulations, findings, decisions, and awards shall be conclusively pre-

Presumption as to legality of all rules, regulations, orders, findings, etc., of or by the Board.

sumed to be reasonable and lawful, until and unless they are modified or set aside by the Board or upon review.

Section 20. (c) After a final hearing by the Board, it shall within thirty days make and file its findings upon all facts involved in the controversy, and its award, which shall state its determination as to the right of the parties.

Final findings and awards shall be filed within 30 days and state what.

Section 20. (d) The Board in its award may fix and determine the total amount of compensation to be paid and specify the manner of payment, or may fix and determine the weekly disability indemnity to be paid and order payment thereof during the continuance of such disability; providing, however, that the payment of such award and indemnity shall be in the same manner as that of undisputed awards and indemnities coming within the particular plan provided for in this Act to which said award and indemnity belong.

Power of Board to determine and award compensation and time and manner of payment.

Proviso.

Section 20. (e) If in any proceeding it is proved that an accident has happened for which the employer would be liable to pay compensation if disability has resulted therefrom, but it is not proved that an incapacity has resulted, the Board may, instead of dismissing the application, award a nominal disability indemnity if it appears that disability is likely to result at a future time.

When a nominal disability indemnity may be awarded.

Section 20. (f) The Board shall have continuing jurisdiction over all its orders, decisions, and awards and may, at any time, upon notice, and after opportunity to be heard is given to the parties in interest, rescind, alter, or amend any such order, decision, or award made by it upon good cause appearing therefor. Any order, decision, or award rescinding, altering, or amending a prior order, decision or award, shall have the same affect as original orders, or awards.

Jurisdiction to rescind, alter or amend any order, decision, award, etc.

Section 20. (g) A full and complete record shall be kept of all proceedings and hearings had before the Board or any member thereof, of any formal hearing had and all testimony produced before the Board, or any member thereof, shall be taken down by a stenographic reporter appointed by the Board, and the parties shall be entitled to be heard in person or by attorney. In cases of an action to review any order or decision of the Board, a transcript of such testimony, together with all exhibits, and of the pleadings, records and proceedings in the cause shall constitute the record of the Board.

Complete records of all proceedings and hearings to be kept and testimony to be taken down by a stenographer.

Parties may be represented by an attorney. Record on review.

Section 20. (h) No orders or decisions of the Board shall be subject to collateral attack, and may be reviewed or modified only in the manner provided herein.

Collateral attack not permitted.

Section 21. (a) At any time within twenty days after the service of any order or decision of the Board, any

Application for rehearing to be made within 20 days.

Grounds for rehearing.

party or parties aggrieved thereby may apply for a rehearing upon one or more of the following grounds and upon no other grounds.

1. That the Board acted without or in excess of its powers.

2. That the order, decision or award was procured by fraud.

3. That the evidence does not justify the findings.

4. That the applicant has discovered new evidence, material to him, and which he could not, with reasonable diligence, have discovered and produced at the hearing.

5. That the findings do not support the order, decision or award.

6. That the order, decision, or award is unreasonable.

Board may at any time, after notice and application, diminish or increase an award, upon what grounds.

Section 21. (b) Nothing contained in Section 21 (a) shall, however, be construed to limit the right of the Board, at any time after the date of its award, and from time to time after due notice and upon the application of any party interested to review, diminish or increase within the limits provided by this Act, any compensation awarded upon the grounds that the disability of the person in whose favor such award was made has either increased or diminished or terminated.

Application for rehearing shall set forth, what.

Section 21. (c) The application for rehearing shall set forth specifically and in full detail the grounds upon which the applicant considers said order, decision, award, rule, or regulation to be unjust or unlawful, and shall in other respects conform to such rules and regulations as the Board may prescribe.

Power to make rules of procedure on rehearings.

Force of order changing original order.

Section 21. (d) The Board shall have full power and authority to make and prescribe rules to govern the procedure upon rehearing, and any matter before it and any order made after such rehearing abrogating or changing the original order shall have the same force and effect as an original order and shall not affect any right, or enforcement of any right, arising from or by virtue of the original order.

Application for rehearing or an appeal shall not operate as a stay.

Section 21. (e) An application for rehearing or the appeal hereinafter provided shall not excuse any employer, employe, or other person, from complying with or obeying any order or requirement of the Board, or operate in any manner to stay or postpone the enforcement of an order or requirement thereof, except as the Board or the Court may direct.

Appeals to the District Court, time within which must be taken.

Section 22. (a) Within thirty days after the application for a rehearing is denied, or, if the application is granted, within thirty days after the rendition of the decision on the rehearing, and within twenty days after notice thereof, any party affected thereby may appeal

What District Court has jurisdiction.

to the District Court of the Judicial District of the State of Montana, including the County in said State wherein the employer may have his place of residence, or if such employer be a corporation, may have its principal office or place of business, or if said appeal be prosecuted by an injured workman or his dependents, such appeal may be taken to the District Court wherein is located the county within which such workman was injured, which said appeal shall be for the purpose of having the lawfulness of the original order, decision or award, or the order, decision or award on rehearing inquired into and determined.

Purpose of appeal.

How appeal taken.

Service of notice.

Section 22. (b) Said appeal shall be taken by serving a written notice of said appeal upon the chairman of such Industrial Accident Commission, or upon any other member thereof, which said service shall be made by the delivery of a copy of such notice to such chairman or member, and filing the original with the clerk of the court to which said appeal is taken. A copy of such notice must also be served upon the adversary party if there be any, by mailing the same to said adversary party to such address of such party as said party shall have left with the Board. If such party shall have left no address with the Board then no service upon such party shall be required. The order of filing and service of said notice is immaterial. Immediately upon service upon said Board of said notice, the said Board shall certify to said District Court the entire record and proceedings, including all testimony and evidence taken by said Board, with the Clerk of said District Court. Immediately upon the return of such certified record, the District Court shall fix a day for the hearing of said cause, and shall cause notice to be served upon the Board and upon the appellant, and also upon the adversary party, if there be any. The court may, upon the hearing, for good cause shown, permit additional evidence to be introduced, but, in the absence of such permission from the Court, the cause shall be heard, on the record of the Board as certified to the court by it. The trial of the matter shall be de nova, and upon such trial the court shall determine whether or not the Board regularly pursued its authority, and whether or not the findings of the Board ought to be sustained, and whether or not such findings are reasonable under all the circumstances of the case.

Record to be certified to District Court.

Fixing day of hearing.

When additional evidence may be introduced on appeal.

Trial de nova.

Court to determine what.

Right of appearance and duty of Board to appear.

Section 22. (c) The Board, and each party to the action or proceeding before the Board, shall have the right to appear in the proceeding, and it shall be the duty of the Board to so appear. If the Court shall find

Court shall set aside conclusions, orders, etc., of the Board when.

from such trial, as aforesaid, that the findings and conclusions of the Board are not in accordance with either the facts or the law, or that they ought to be other or different than those made by the Board, or that any finding and conclusion or any order, rule or requirement of the Board is unreasonable, the Court shall set aside such finding, conclusion, order, judgment, decree, rule, or requirement of said Board, or shall modify or change the same as law and justice shall require, and the Court shall also make and enter any finding, conclusion, order or judgment that shall be required, or shall be legal and proper in the premises.

Judgment and findings of the court.

Appeals to the

Section 22. (d) Either the Board, or the appellant, or any adversary party, if there be one, may appeal to the Supreme Court of the State of Montana, from any final order, judgment or decree of the said District Court, which said appeal shall be taken in like manner as appeals are now taken in other civil actions to the said Supreme Court, and upon such appeal the said Supreme Court shall make such orders in reference to a stay of proceedings as it finds to be just in the premises, and may stay the operation of any order, judgment, or decree of said District Court without requiring any bond or undertaking from the applicant for such stay. When any such cause is so appealed it shall have precedence upon the calendar of the said Supreme Court, and shall be tried anew by said Supreme Court upon the record made in said District Court and before said Board, and judgment and decree shall be entered therein as expeditiously as possible.

Power of Supreme Court

Cause to have precedence on calendar of Supreme Court.

Appropriation out of State Treasury.

Section 23. (a) There is hereby appropriated out of the State Treasury, the sum of Fifty Thousand ($50,000.00) Dollars, or so much thereof as may be necessary, to be known as the Industrial Administration Fund, out of which the salaries, traveling and office expenses of the Board shall be paid, and all other expenses incident to the administration of this Act.

Appropriation from Industrial Accident Fund.

Section 23. (b) There is hereby appropriated out of the Industrial Accident Fund such sums as may be necessary to pay the Compensation provided for in this Act.

Court to give liberal construction to Act.

Section 24. (a) Whenever this Act, or any part or section thereof, is interpreted by a court, it shall be liberally construed by such court.

Effect of decision holding any part of Act unconstitutional.

Section 24. (b) If any section, subsection, subdivision, sentence, clause, paragraph, or phrase of this Act is for any reason held to be unconstitutional or void, such decision shall not affect the validity of the remaining portions of this Act, so long as sufficient remains of

the Act to render the same operative and reasonably affective for carrying out the main purpose and intention of the Legislature in enacting the same as such purpose and intention may be disclosed by the Act.

Money coming into Industrial Accident Fund to be held in trust.

Section 24. (c) The moneys coming into the Industrial Accident Fund shall be held in trust for the purpose for which such fund is created, and if this Act shall be hereafter repealed, such moneys shall be subject to such disposition as may be provided by the Legislature repealing this Act; in default of such legislative provision, distribution thereof shall be in accordance with the justice of the matter, due regard being had to obligations of compensation incurred and existing.

Disposition in case of repeal of Act.

Pending actions not affected by this Act.

Section 24. (b) This Act shall not affect any action pending or any cause of action existing on the thirtieth day of June, 1915.

Annual report of Board to be made not later than October 1st showing what.

Section 25. (a) The Board shall, not later than the first day of October of each year, make a report to the Governor covering its entire operations and proceedings for the preceding fiscal year, with such suggestions or recommendations as it may deem of value for public information. A reasonable number of copies of such report shall be printed for general distribution.

Copies for general distribution.

When Act to take effect.

Section 25. (b) This Act shall take effect and be in force from and after its passage and approval, except as to its compensation provisions, which shall not take effect until the first day of July, 1915.

PART II.

COMPENSATION PLAN NUMBER ONE.

When and how employer may elect to adopt.

Section 30. (a) Any employer in the industries, trades, works, occupations, or employments in this Act specified as hazardous, by filing his election to become subject to and be bound by Compensation Plan Number One, upon furnishing satisfactory proof to the Board of his solvency and financial ability to pay the compensation and benefits in this Act provided for, and to discharge all liabilities which are reasonably likely to be incurred by him during the fiscal year for which such election is effective, may by order of the said Board, make such payments directly to his employes as they may become entitled to receive the same under the terms and conditions of this Act.

Direct payment to injured employe.

Proof of solvency of employer electing Plan No. One to be filed when and how.

Section 30. (b) Every such employer now or hereafter engaged in the State of Montana, in the industries, trades, works, occupations or employments herein mentioned, and who shall have elected to be bound by such Compensation Plan Number One, shall file such proof

of his solvency within the time and in such form as may be prescribed by the rules or orders of the Board.

When employer electing Plan No. One to be permitted to carry on business and settle directly with employe.

If such employer, making such election, shall be found by the Board to have the requisite financial ability to pay the compensation and benefits in this Act provided for, then the Board shall grant to such employer permission to carry on his said business for the fiscal year within which such election is made, and such proof filed, or the remaining portion of such fiscal year, and to make such payments directly to his employes as they may become entitled to receive the same. Every employer, so long as he continues in his said employment, and so long as he continues to be bound by such Compensation Plan Number One, shall at least thirty days before the expiration of each fiscal year, renew his application to be permitted to continue to make such payments as aforesaid directly to his employes for the next ensuing fiscal year, and under like circumstances as those mentioned for the granting of such permission upon such first application, the Board may renew the same from year to year.

When employer shall renew his application to continue under said plan.

Additional proof of solvency may be required when.

Section 30. (c) The Board may at any time require from any employer acting under Compensation Plan Number One additional proof of solvency and financial ability to pay the compensation provided by this Act, and may at any time, upon notice to such employer, of not less than ten or more than twenty days, after and upon a full hearing, revoke any order or approval theretofore made.

May revoke order permitting operation under plan.

When Board may require employer electing Plan No. One to give security.

Section 30. (d) If said Industrial Accident Board shall find that such employer has not financial responsibility for the payment of the compensation herein provided to be paid which might reasonably be expected to be chargeable to such employer during the fiscal year to be covered by such permission, said Industrial Accident Board must so find, and must require such employer, before granting to him such permission, or before continuing or engaging in such employment, subject to the provisions of Compensation Plan Number One, to give security for such payment, which security must be in such an amount as said Board shall find is reasonable and necessary to meet all liabilities of such employer which may reasonably and ordinarily be expected to accrue during such fiscal year. Said security must be deposited with the Treasurer of the Board and may be a certain estimated per centum of said employer's last preceding annual pay-roll, or a certain per centum of the established amount of his annual pay-roll for said fiscal year, or said security may be in the form of a bond or undertaking executed to said Industrial Accident Board in the

Amount of security.

Deposited when.

amount to be fixed by it with two or more sufficient sureties, which undertaking must be conditioned that such employer will well and truly pay, or cause to be paid, all such sums and amounts for which the employer shall become liable under the terms of this Act to his employes during said fiscal year or such security may consist of any State, county, municipal, or school district bonds, or the bonds or evidence of indebtedness of any individuals or corporations which the Board may deem solvent; and every such deposit and the character and amount of such securities shall at all times be subject to approval, revision, or change by the Board as in its judgment may be required, and upon proof of the final payment of the liability for which such securities are given, such securities, or any remaining part thereof, shall be returned to the depositor. The Treasurer of the Board and his bondsmen shall be liable for the value and safe keeping of all such deposits or securities, and shall, at any time, upon demand of the bondsmen or the depositor or the Board, account for the same, and the earnings thereof.

Condition of bond given as security.

Municipal bonds or other solvent securities.

When securities to be returned to employer.

Treasurer of Board liable for safe keeping of securities.

Section 30. (e) Upon the failure of said employer to pay any compensation provided for in this Act upon the terms and in the amounts and at the times when the same shall become due and payable, it shall be the duty of such State Accident Board, upon demand of the person to whom compensation is due, to apply any deposits made with the Board to the payment of the same, and it shall be its duty to take the proper steps to convert any securities on deposit with the said Board, or sufficient thereof, into cash and to pay the same upon the liabilities of said employer, accruing under the terms of this Act, and it shall be its duty, insofar as the same shall be necessary, to collect and enforce the collection of the liability of all sureties upon any bonds which may be given by the said employer to insure the payment of his said liability. And to these ends, and for these purposes, the Board shall be deemed to be the owner of said deposit and security and the obligee in said bond in trust for the said purposes and may proceed in its own name to recover upon such bonds or foreclose and liquidate said securities.

When employer fails to pay compensation duty of Board to reduce securities to cash and pay the liability.

Board when necessary to enforce liability of sureties on bond.

Board deemed owner of securities in trust for what purpose.

Section 30. (f) Within thirty days after the happening of an accident where death or the nature of the injury renders the amount of future payments certain, or reasonably certain, the employer shall make a deposit or give security as herein defined with the Treasurer of the Board for the protection and guaranty of the payment of such liability in such sum as the Board may

When employer shall make deposit or security to guarantee payment of compensation.

Proviso.

direct; provided, however, that if sufficient securities are already on deposit with the said Board or if the said Board, shall have determined that the employer has sufficient financial responsibility to meet said liability of the said employer, together with other liabilities already accrued, no such additional deposit or security shall be demanded.

How employer may be relieved from liability.

Section 30. (g) Any employer against whom liability may exist for compensation under this Act may, with the approval of the Board, be relieved therefrom by (1) depositing the present value or the estimated present value of the total unpaid compensation for which such liability exists, assuming interest at five per centum per annum, with the Treasurer of the Board; or (2) purchasing an annuity within the limitations provided by law, in any insurance company granting annuities, and authorized to transact business in this State, subject to the approval of the Board.

PART III.

COMPENSATION PLAN NUMBER TWO.

Employer electing Plan No. Two to insure his liability.

Section 35. (a) Any employer in the industries, trades, works, occupations, or employments in this Act specified as hazardous, by filing his election to become subject to and bound by Compensation Plan Number Two, may insure his liability to pay the compensation and benefits herein provided for, in any insurance company authorized to transact such business in this State.

Duty of employer electing Plan No. Two.

Section 35. (b) Any employer electing to become subject to and bound by Compensation Plan Number Two shall file with the Board written acceptance of the provisions of Compensation Plan Number Two, together with a statement upon forms provided by the Board of the nature of his employment, the character and location of his works, the number of men employed during the preceding year, or any part of the preceding year, and the probable number of men to be employed during the first fiscal year to be covered by such election, and the Board shall thereupon, determine the amount of insurance which will be reasonably necessary to secure the compensation with which the said employer may reasonably be expected to become chargeable during such fiscal year. And thereupon, the said employer shall file the policy or policies of insurance herein provided for with the Board, which policy or policies shall insure in the amounts so fixed by the Board against any and all liability of the employer to pay the compensation and benefits provided for in this Act. The amount of such insurance shall be fixed by the Board for each ensuing fiscal year during

Board to determine amount of insurance necessary. Policy of insurance to be filed with the Board.

which said employer shall engage in his said employment, and shall remain subject to the provisions of Compensation Plan Number Two, and for the purpose of fixing such amount of said insurance, the said Board may make all reasonable and necessary investigation, and the said employer shall furnish to such Board all information which it may require.

Board to annually fix amount of insurance.

Policies shall contain what.

Section 35. (c) All policies insuring the payment of compensation under this Act must contain a clause to the effect that as between the employe and the insurer the notice to, or knowledge of the occurrence of the injury on the part of the insured shall be deemed notice or knowledge, as the case may be, on the part of the insurer; that jurisdiction of the insured for the purpose of this Act shall be jurisdiction of the insurer; and that the insurer shall, in all things, be bound by and subject to the awards, orders, judgments, or decrees rendered against such insured.

Agreement to be contained in policies of insurance.

Section 35. (d) No such policy shall be issued unless it contains the agreement of the insurer that it will promptly pay to the person entitled to compensation all the installments of compensation or other payments in this Act provided for and that the obligation shall not be affected by any default of the insured after the injury, or by any default in the giving of any notice required by such policy or by this Act, or otherwise. Such agreement shall be construed to be a direct promise by the insurer to the person entitled to compensation.

Policies deemed to be made subject to provisions of this Act.

Form of insurance must have been approved.

Section 35. (e) Every policy for the insurance of the compensation herein provided for, or against liability therefor, shall be deemed to be made subject to the provisions of this Act. No insurer shall enter into any such policy of insurance unless its form shall have been approved by the Board, and as otherwise provided by law.

When renewals to be made and delivered.

Section 35. (f) Every renewal of such policy shall be made and delivered to said Board at least thirty days prior to the expiration of the expiring policy.

Insurer shall make deposit with Board when.

Section 35. (g) Within thirty days of the happening of an accident where death, or the nature of the injury renders the amount of future payments certain or reasonably certain, the insurer shall make a deposit as herein defined with the Treasurer of the Board for the protection and guaranty of the payment of such liability in such sum as the Board may direct.

How insurer may be relieved from liability.

Section 35. (h) Any insurer against whom liability may exist for compensation under this Act may, with the approval of the Board, be relieved therefrom by (1) depositing the present value or the estimated present value of the total unpaid compensation for which such lia-

bility exists, assuming interest at five per centum per annum, with the Treasurer of the Board; or (2) by purchasing an annuity within the limitations provided by law in any insurance company granting annuities and authorized to transact business in this State, subject to the approval of the Board.

Insurance policy can be cancelled only when and how.

Section 35. (i) No policy of insurance issued under the provisions of Compensation Plan Number Two shall be cancelled within the time limited for its expiration except upon thirty days' notice to the employer in favor of whom such policy is issued, and to the Board, unless such policy sought to be cancelled shall have been sooner replaced by other insurance.

Reports of insurance companies to Board.

Section 35. (j) Every insurance company transacting business under this Act, shall, at the time and in the manner prescribed by the Board, make and file with the Board such reports of accidents as the Board may require.

Insurance policies to contain clause agreeing to do what.

Section 35. (k) Every policy or contract insuring against liability for compensation under Compensation Plan Number Two must contain a clause to the effect that the insurer shall be directly and primarily liable to and will pay directly to the employe or in case of death, to his beneficiaries, or major or minor dependents, the compensation, if any, for which the employer is liable Every such policy shall at all times be subject to the approval, change, or revision by the Board, and shall contain the clauses, agreements, and promises required by this Act.

Policies subject to approval, change or revision of the Board.

Deposits made under Plan No. Two to be held in trust as security for what.

Reduction of deposit.

When and how deposits may be changed, substituted, etc.

Earnings of deposits.

Liability of treasurer of Board.

Section 35. (l) Any deposit made under the provisions of Compensation Plan Number Two shall be held in trust by the Treasurer of the Board as security for the payment of the liability for which the deposit was made. Such deposit may be reduced from time to time with the permission of the Board, as the payment of the liability of the insurer may reduce the amount required to be on deposit. Such deposit may be changed or renewed when desired by the depositor, by withdrawing the same, or any part thereof, and substituting other deposits therefor; upon proof of the final payment of the liability for which such deposit was made, any deposit remaining shall be returned to the depositor. All earnings made by such deposit shall be first applied upon any liability of the depositors and if no such liability exists, then such earnings shall upon demand be delivered to such depositor. The Treasurer of the Board and his bondsmen shall be liable for the value and safe-keeping of such deposit, and shall at any time, upon demand of his bondsmen, the depositor, or the Board, account for the same and the earnings thereof.

PART IV.

COMPENSATION PLAN NUMBER THREE.

What necessary in electing Plan No. Three.

Section 40. (a) Every employer, subject to the provisions of Compensation Plan Number Three, shall, in the manner and at the times herein specified, pay into the State Treasury, in accordance with the following schedule, a sum equal to the percentage of his total annual pay-roll specified in this section; which said schedule is subdivided into classes, and the percentage of payments of premiums or assessments to be required from each of said classes is as follows:

Percentage of pay-roll to be paid in under Plan No. Three.

CLASS ONE—Broom or brush manufacturing, without sawmill; theatre stage employes; moving picture operators; electrotyping; engraving; lithographing; photo engraving; stereotyping; embossing; bookbinding; printing; jewelry manufacturing; not otherwise specified; SIXTY-FIVE ONE HUNDREDTHS OF ONE PER CENTUM.

CLASS TWO—Cloth, textile, and wool manufacturing, not otherwise specified; wharf employes, other than stevedores and longshoremen; EIGHT-TENTHS OF ONE PER CENTUM.

CLASS THREE—Manufacturing alcohol, drugs, other than ammonia; candy, crackers, saddles, harness, leather novelties, mattresses, not including springs or wire, paint, varnish, wagons, buggies, carriages, sleighs, cutters; operation of tugs and steamboats; manufacturing roofing paper and articles of paper not otherwise specified, paper boxes, automobiles, motor trucks, hardware; working in rubber, not otherwise specified; manufacturing boots and shoes; manufacturing articles of and working in leather not otherwise specified; ONE AND THREE-TENTHS PER CENTUM.

CLASS FOUR—Manufacturing cheese, condensed milk; operating creameries, manufacturing spices and condiments; paper hanging; kalsomining; whitewashing; making willow baskets; setting tiles; mantles and marble work, inside work only; making grease, lard, soap, tallow; inside plumbing work; installing heating systems; painting and decorating, inside work only; metal ceiling work; ONE AND FOUR-TENTHS PER CENTUM.

CLASS FIVE—Manufacturing glass; operating breweries, bottling works, grain warehouses, grain elevators; manufacturing articles of brass, copper, lead and zinc; operating machine shops, not otherwise specified; lathing, plastering; canneries of meat, fruit, vegetables, or fish, not including can manufacturing; cutting stone or paving blocks, other than in quarries, with or without

machinery; installing electrical apparatus inside; installing fire alarm apparatus inside; covering boilers or steam pipes; concrete laying in floors, street paving or sidewalks, not otherwise specified; laying asphalt and other paving not otherwise specified; including shop and yard; manufacturing canoes and row-boats; well drilling; constructing and repairing of paving of bricks or blocks; ONE AND FIVE-TENTHS PER CENTUM.

CLASS SIX—Operating of laundries with power, dyeing, bleaching, and cleaning works; manufacturing of furniture, show-cases, office and store furniture and fixtures; cabinet making; manufacture of wire mattresses, bed springs, wooden coffins, caskets, rough wooden boxes for coffins; building hot houses, working in food stuffs, fruits, edible oils or vegetables, not otherwise classified; operating flour mills, chop mills, feed mills; ONE AND SIX-TENTHS PER CENTUM.

CLASS SEVEN—Manufacturing wood fibre ware; installing automatic sprinklers or ventilating systems; setting glass; erecting fireproof doors and shutters inside of buildings; operating tanneries, sugar factories; beveling glass; manufacturing peat fuel; building wooden stairs; manufacturing brick, including kilns and buildings and diggings in pits, brickettes, brooms with sawmills, earthenware, fire clay, porcelain ware, pottery, tile, terra cotta; brush making with sawmills; ONE AND EIGHT-TENTHS PER CENTUM.

CLASS EIGHT—Manufacturing of ammonia; operating water works, gas works; grading, either of streets or otherwise, or road making, without blasting; construction of plank road, plank street or plank sidewalk; operating creosoting works, pile treating works; treating ties or other timber products; plumbing, both at and away from the shop, including house connections, without blasting; construction of water works, gas works and coke ovens, including laying of mains and connections, without blasting; ONE AND NINE-TENTHS PER CENTUM.

CLASS NINE—Manufacturing artificial ice; operating refrigerator plants, cold storage plants, foundries, packing houses, including slaughtering; manufacturing agricultural implements, threshing machinery, traction engines, harvesting machinery; manufacturing asphalt; operating steam heating and power plants; manufacturing gas or gasoline engines; operating ferries; stone crushing; not at quarries; boat or ship building, other than canoes or row-boats, without scaffolds; laying hot flooring compositions, not otherwise specified; operating stock yards; TWO PER CENTUM.

CLASS TEN—Operating paper mills, pulp mills, longshoring, stevedoring, manufacturing fertilizers; operating garbage works; incinerators, crematories, lime kilns or burners, no quarrying; installing boilers, steam engines, dynamos, machinery not otherwise specified; putting up belts for machinery; manufacturing barrels, kegs, pails, staves, tubs, excelsior, veneer, packing cases, sash, doors and blinds; operation and maintenance of interurban railways, without third rail; TWO AND TWO-TENTHS PER CENTUM.

CLASS ELEVEN—Millwrighting, not otherwise specified; manufacturing building material, not otherwise specified; working in building material, not otherwise specified; TWO AND ONE-QUARTER PER CENTUM.

CLASS TWELVE—Operation of smelters; manufacturing of metallic coffins; manufacturing of iron or steel; boat or ship rigging; planing mills, independent; cement manufacturing; operating blast furnaces; TWO AND THREE-TENTHS PER CENTUM.

CLASS THIRTEEN—Street or road making, with blasting; manufacturing wood baskets, kindling wood, window and door screens, cordage and rope; manufacturing and refining oil; placing wires in conduits; TWO AND FOUR-TENTHS PER CENTUM.

CLASS FOURTEEN—Concentrating and amalgamating of ores; wood working, not otherwise specified; operating gravel bunkers; hauling gravel; operating gravel pits; operating wood saws; painting, exterior work; operating boiler works; making steam shovels; boilers; shipwrighting; operating sawmills, lath mills; bridge work factories; operation of and work in mines, other than coal; TWO AND FIVE-TENTHS PER CENTUM.

CLASS FIFTEEN—Operating rolling mills; manufacturing tanks, not otherwise specified; erecting and repairing advertising signs; harvesting and storing of ice, including loading on cars; making and repairing of locomotives and railroad cars; cutting stone at stone yards connected with quarries; boat or ship building with scaffolds; logging operations, with or without machinery; booming or driving logs, ties, or other timber products; operating shingle mills; operating quarries; TWO AND THREE-QUARTERS PER CENTUM.

CLASS SIXTEEN—Operating dredges; construction of telephone and telegraph systems; construction of dams and reservoirs, electric light and power plants, water works and water systems; installing furnaces; constructing blast furnaces; sewer building, maximum depth of excavation at any point seven feet; operation and maintenance of steam railways, including logging railways; operating coal mines; THREE PER CENTUM.

CLASS SEVENTEEN—Operating dry docks, including floating dry docks; ornamental metal work within buildings; electric railway construction, without rock work or blasting; railroad construction, including street and cable railways, without rock work or blasting; building canals, without rock work or blasting; installing freight or passenger elevators; operation of telephone and telegraph systems; making dredges; constructing dry docks; THREE AND ONE-QUARTER PER CENTUM.

CLASS EIGHTEEN—Carpenters not otherwise specified; constructing grain elevators, not metal framed; stump pulling with donkey engines; steam, electric and cable railway construction, with rock work or blasting; construction of logging railways, with rock work or blasting; operation and maintenance of electric railways using third rail, and street railways, all systems, including electric and cable; operation and maintenance of electric light and power plants, including transmission systems and extensions of lines; electric systems, not otherwise specified; THREE AND ONE-HALF PER CENTUM.

CLASS NINETEEN—Pile driving; clearing land with blasting; galvanized iron or tin works; marble work; fire proofing of buildings, by means of wire netting and concreting; cellar excavation, with or without blasting; THREE AND THREE-QUARTERS PER CENTUM.

CLASS TWENTY—Constructing breakwaters, marine railways and jetties; installation and repair of electrical apparatus, not otherwise specified, outside work only; stamping of metal or tin; building trestles and tunnels other than mining; shaft sinking, not otherwise specified; FOUR PER CENTUM.

CLASS TWENTY-ONE—Moving safes, boilers, machinery; construction of tanks, water-towers, windmills, not metal frame; plumbers making house connections with blasting; roof work; slate work; stone work; stone setting; brick work construction, not otherwise specified; construction of canals, with rock work or blasting; bridge building, wooden; construction of floating docks; constructing chimneys of metal or concrete; FOUR AND ONE-HALF PER CENTUM.

CLASS TWENTY-TWO—Excavations, not otherwise specified; laying of mains and connections, with blasting; sewer building, where maximum depth of excavation at any point exceeds seven feet; blasting, not otherwise specified; manufacturing fire works; FIVE PER CENTUM.

CLASS TWENTY-THREE—Erecting fire escapes, fire-

proof doors and shutters outside of buildings; building concrete structures, not otherwise specified; concrete or cement work not otherwise specified; SIX PER CENTUM.

CLASS TWENTY-FOUR—Constructing iron or steel frame structures or parts; constructing and repairing steel frames and structures; sub-aqueous works; caisson works; SIX AND ONE-HALF PER CENTUM.

CLASS TWENTY-FIVE—House moving, house wrecking; construction or repair of steeples; construction of brick chimneys; SIX AND THREE-QUARTERS PER CENTUM.

CLASS TWENTY-SIX—Manufacturing powder, dynamite and other explosives, not otherwise specified; TEN PER CENTUM.

To consist of employers and employes engaged in non-hazardous work, electing to come under.

CLASS TWENTY-SEVEN—Any employer and his employes engaged in non-hazardous work or employment, by their joint election, filed with and approved by the Board, may accept the provisions of Compensation Plan Number Three. In such event, such employer and employes shall be known as Class Twenty-seven, the rate of assessment in which shall be ONE-HALF OF ONE PER CENTUM.

How assessments to be computed when employment embraces different classifications.

Section 40. (b) If a single establishment or work comprises several occupations listed in Section 40 (a) in different classifications, the assessment shall be computed according to the pay-roll of each occupation if clearly separable; otherwise an average rate of assessment shall be charged for the entire establishment, taking into consideration the number of employes and the relative hazards.

What classifications are advisory only and subject to re-arrangement, etc.

Section 40. (c) The classification of hazardous occupations in Section 40 (a) and the rates of premium or assessment therein fixed are advisory only, and the Board is hereby given full power and authority to rearrange, revise, add to, take from, change, modify, increase, or decrease any classification or rate named in Section 40 (a) as in its judgment or experience may be necessary or expedient; provided, that no change in the classification or rates prescribed in Section 40 (a) shall be made effective prior to the end of the first fiscal year, and thereafter any changes so made shall not become effective until thirty days after the date of the order or decision of the Board making such change except that in case of new industries, or industries not enumerated in Section 40 (a), the Board shall have the right to make an immediate classification thereof and establish a rate therefor.

Changes not to be effective before when.

Intent and purpose of Plan No. Three.

Section 40. (d) It is the intent and purpose of Compensation Plan Number Three that each industry, trade, occupation, or employment coming under the provisions

of said plan shall be liable and pay for all injuries happening to employes coming under the provisions of said plan, and that all funds collected by assessments as herein provided shall be paid into one common fund to be known as the Industrial Accident Fund, which fund shall be devoted exclusively to the payment of all valid claims for injuries happening in each industry, trade, occupation, or employment coming under the provisions of Compensation Plan Number Three; provided that accounts shall be kept with each industry, trade, occupation or employment in according with the foregoing classifications, or otherwise, as the Board may direct, both as to receipts and disbursements, for the purpose of providing information and statistics necessary for determining any changes in such rates or classifications.

Fund to be paid for what purpose only.

Accounts to be kept with each industry, etc.

Section 40. (e) There shall be collected from all classes as initial payment into the Industrial Accident Fund, on or before the fifteenth day of July, 1915, one-fourth of the premium of assessment for that fiscal year, and one-twelfth thereof at the first of each month beginning with October first, 1915; provided, that if such fund shall have a sufficient balance on hand at the end of the first three months, or any month thereafter, to meet the requirements of the Industrial Accident Fund, no assessment shall be called for such month.

Initial payment may be collected on or before July 15, 1915.

Proviso.

Section 40. (f) The first payment shall be collected upon the pay-roll of the months of April, May and June. 1915. At the end of each calendar year an adjustment of the account shall be made upon the basis of the actual pay-roll. Any shortage shall be made good within thirty days thereafter. Every employer who shall enter into business at any intermediate day shall make his payments in the same manner and upon the same basis before commencing operations; the amount of such payments shall be calculated upon his estimated pay-roll, and an adjustment shall be made on or before February first in the year following, in the manner above provided.

First payment collected on what pay-roll. Annual adjustment of accounts.

Manner and time of making payments by new employers.

Section 40. (g) Any employer who is in default in the observance of any order of the Board, issued pursuant to the provisions of Sections 40 (a) to 40 (f) inclusive, shall, in addition to any other penalty provided by this Act, be charged an advance of twenty-five per centum over the established rate, and such advanced rate shall continue and be in force until such employer shall have ceased to be in such default.

In case of default rate to be advanced 25 per centum until what time.

Section 40. (h) Any change in classification of risks or premium rates, or any change caused by change in the class of work, occurring during the calendar year, shall be equalized by the Board within thirty days after the

Changes in classification of risks to be equalized when.

end of such year in proportion to its duration in accordance with the schedules provided in this Act.

Section 40. (i) If, at the end of any year, it shall be seen that the contribution to the Industrial Accident Fund by any class of industry shall be less than the drain upon such fund on account of that class, the deficiency shall be made good to the fund on the first day of February of the following year by the employers of that class in proportion to their respective payments for the previous year.

If Industrial Accident Fund not sufficient for any class at end of year deficiency to be made good when and by whom.

Section 40. (j) Upon the happening of an accident where death, or the nature of the injury renders the amounts of future payments certain or reasonably certain, the Board shall forthwith cause the Treasurer of the Board to set apart out of the Industrial Accident Fund a sum of money, to be calculated on the basis of the maximum sum required to pay the compensation accruing on account of such injury, which will meet such required payments not exceeding, however, the sum of Four Thousand Dollars for any one case.

Amount to be set apart when required payment is reasonably certain in case of accident.

Limit and amount.

Section 40. (k) The Treasurer of the Board shall invest such reserve in bonds of the United States, bonds of the State of Montana, or bonds of any county, city, or school district in the State of Montana, or any other security which may be approved by said Board, and out of the same and its earnings shall be paid the monthly installments, and any lump sum then or thereafter arranged for the case. Any deficiency shall be made good out of, and any balance or overplus shall revert to the Industrial Accident Fund.

Such reserve to be invested in bonds or securities named.

Monthly instalments, etc., to be paid out

Making good deficiency.

Section 40. (l) The Treasurer of the Board shall keep an accurate account of all such segregations of the Industrial Accident Fund, and upon direction of the Board shall divert from the main fund any sums necessary to meet monthly payments, pending the conversion into cash of any security, and in such case shall repay the same out of the cash realized from the security.

Treasurer to keep accurate accounts of all such segregations.

To divert from main fund, what.

Section 40. (m) If any employer shall default in any payment to the Industrial Accident Fund, the sum due may be collected by an action at law in the name of the State, and such right of action shall be cumulative.

In case of default by employer amount due to be collected how.

Section 40. (n) For any injury happening to any of his workmen during default in any payment to the Industrial Accident Fund, the defaulting employer as to such injury shall be considered as having elected not to come under the provisions of this Act, except that he shall be and remain liable to pay to the Industrial Accident Fund the amount of such default, together with the penalty prescribed by Section 40 (g).

Injury happening while employer is in default.

Person entitled to sue may elect to take under this Act, and assign his cause of action to the State.

Section 40. (o) The person entitled to sue under the provisions of Section 40 (n) shall have the option of proceeding by suit or taking under this Act. If such person take under this Act, the cause of action against the employer shall be assigned to the State for the benefit of the Industrial Accident Fund. If such person shall elect to proceed against the defaulting employer, such election shall constitute a waiver of any right to compensation under the provisions of this Act.

Suit vs. employer a waiver of rights under Act.

Prosecution or settlement of assigned cause of action.

Section 40. (p) Any cause of action assigned to the State under the preceding section may be prosecuted or compromised by the Board in its discretion.

Application for compensation under Plan No. Three.

Section 40. (q) Where a workman is entitled to compensation under Compensation Plan Number Three, he shall file with the Board his application therefor, together with the certificate of the physician who attended him, and it shall be the duty of such physician to lend all necessary assistance in making application for compensation and such proof of other matters as may be required by the rules of the Board without charge to the workman.

Duty of physician.

Physician to be paid out of what fund.

Section 40. (r) For a proper compliance with the provisions of the preceding section, the physician, after approval by the Board, shall be paid out of the Industrial Administration Fund One and One-half Dollars for each case.

Application in case of death.

Section 40. (s) Where death results from the injury, the parties entitled to compensation under Compensation Plan Number Three, or someone in their behalf, shall make application for the same to the Board. The application must be accompanied with proof of death and proof of relationship, showing the parties entitled to compensation, certificate of the attending physician, if any, and such other proof as may be required by the rules of the Board.

Application to be accompanied by proof of death and relationship.

What to be included in computing compensation in hazardous employment.

Section 40. (t) In computing the pay-roll, the entire compensation received by every workman employed in the hazardous occupations enumerated in this Act, shall be included, whether it be in the form of salary, wage, piecework, overtime, or any allowance in the way of profit-sharing premium, or otherwise, and whether payable in money, board or otherwise.

Disbursements out of Industrial Accident Fund.

Section 40. (u) Disbursements out of the Industrial Accident Fund shall be made by the Treasurer of the Board as the Board may order. If at any time there shall not be sufficient money in the Accident Fund with which to pay any warrants drawn thereon, the employer, on account of whose workmen the warrant was drawn, shall pay the same, and upon his next contribution to such fund he shall be credited with the amount so paid with interest

Employer shall pay warrant when. Credit to be given.

thereon at the rate of six per centum per annum from the date of such payment to the date upon which the next assessment becomes payable, and if the amount of the credit exceeds the amount of such assessment, he shall have a warrant upon such fund for the excess, and if said warrant be not paid for want of funds, it shall be credited to such employer and be applied upon succeeding assessments.

Excess to be refunded employer by a warrant.

Earnings and interest on deposits.

Section 40. (v) All earnings made by the Industrial Accident Fund by reason of interest paid for the deposit thereof, or otherwise, shall be credited to and become a part of said fund, and the making of profit, either directly or indirectly, by the Treasurer of the Board, or any other person, out of the use of the Accident Fund shall constitute a felony, and on conviction thereof shall subject the person making such profit to imprisonment in the State Penitentiary for a term not exceeding two years, or a fine not exceeding Five Thousand Dollars, or both such fine and imprisonment, and the Treasurer of the Board shall be liable upon his official bond for all profits realized for any unlawful use of the said fund.

Treasurer shall not make profit out of fund.

Penalty.

Liability on official bond.

PART V.

SAFETY PROVISIONS.

Unsafe places for workmen forbidden.

Section 50. (a) No employer shall construct, maintain, or operate, or cause to be constructed, maintained, or operated any place of employment that is not safe.

Removal of safety devices, etc., forbidden.

Section 50. (b) No employe shall remove, displace, damage, destroy, or carry off any safety device or safeguard furnished and provided for use in any employment or place of employment, or interfere in any way with the use thereof by any other person, or interfere with the use of any method or process adopted for protection of any employe in such employment or place of employment, or fail or neglect to do anything reasonably necessary to protect the life and safety of himself and other employes.

Jurisdiction and supervision of Board over employment and places of employment.

Section 50. (c) The Board is vested with full power and jurisdiction over and shall have such supervision of every employment and place of employment in this State as may be necessary adequately to enforce and administer all laws and all lawful orders requiring such employment and place of employment to be safe and requiring the protection of the life and safety of every employe in such employment or place of employment.

Powers of Board regarding safety of employes.

Section 50. (d) The Board shall have power, in addition to other powers herein granted, by general or special orders, rules or regulations, or otherwise:

1. To declare and prescribe what safety devices, safeguards, or other means or methods of protection as are

well adapted to render employes and places of employment safe.

2. To fix such reasonable standards and to prescribe, modify, and enforce such reasonable orders for the adoption, installation, use, maintenance, and operation of safety devices, safeguards, and other means and methods of protection, as may be necessary for the protection of the life and safety of employes.

3. To fix and order such reasonable standards for the construction, repair and maintenance of places of employment as shall render them safe.

4. To require the performance of any act necessary for the protection of life and safety of employes.

5. To declare and prescribe the general form of industrial accident reports the accidents to be reported and the information to be furnished in connection therewith, and the time within which such reports shall be filed. Nothing in this Act contained shall be construed to prevent the Board from requiring supplemental accident reports; provided, however, that where, by the laws of the State of Montana, the manner or method of carrying on any business, or the rules or regulations in relation thereto, or the character or kind of safety devices has been prescribed, no other or additional requirements shall be made by the Board, but it shall be the duty of the Board to see that the employer lives up to and obeys said laws.

No additional requirements shall be made when.

Publication of notice hearing for purpose of considering and issuing general safety orders.

Effect of inaccuracy in such notice.

Section 50. (e) Upon the fixing of a time and place for the holding of a hearing for the purpose of considering and issuing a general safety order or orders, the Board shall cause a notice of such hearing to be published in one or more daily newspapers of general circulation, published and circulated in the State. No defect or inaccuracy in such notice, or in the publication thereof shall invalidate any general order issued by the Board after a hearing has been had.

Places of employment defined as hazardous to be inspected at least once each year.

Purpose of inspection.

Section 51. (a) After July 1, 1915, every place of employment of a work or occupation defined by Sections 4 (a), 4 (b), 4 (c), 4 (d), 4 (e), and 5 of this Act to be hazardous, shall be inspected, at least once during each year, by an inspector or examiner appointed by the Board. Such inspection shall be for the purpose of determining the condition and operation of such places of employment, as regards the safety of employes working therein, and the use of safeguards, safety appliances, and reasonably safe tools and appliances.

Report of inspection.

Section 51. (b) A report of such inspection shall be filed in the office of the Board and a copy thereof given the employer.

Certificate of safety of inspected place to be displayed how and where.

Section 51. (c) Each place of employment inspected as provided in Section 51 (a) and found in a satisfactory condition shall receive from the Board, upon payment of the inspection fees hereinafter provided for, a certificate to that effect, which certificate must be prominently displayed, under glass, in one of the principal places of the establishment so inspected.

When Board may order safety devices, guards, etc., installed in any place.

Section 51. (d) If, after such inspection and report, thereof, to the Board, it shall be found that any such place of employment is not constructed, maintained or operated as provided in this Act, the Board shall order the installation, use, maintenance and operation, within such reasonable time as the Board may direct, of such safety devices, safeguards, and other means and methods of protection as may be necessary to reasonably insure the safety of the workmen employed therein, subject to the provisions of Section 51 (e).

When Board or inspector may order place of employment closed and put in safe condition.

Section 51. (e) If after such inspection, the Board or any inspector or examiner thereof, shall find such place of employment in such an unsafe condition as to constitute an immediate menace to the safety of the workmen employed therein, the Board, or any inspector or examiner thereof, may order any such place of employment closed, or the work therein to cease, until such safety devices, safeguards, and other means and methods, or changes or removals, as may be ordered by the Board, or any inspector or examiner thereof, shall have been installed, repaired, changed, or removed, and such place of employment put in such condition as will reasonably insure the safety of the workmen employed therein.

Fee for annual inspection to be paid by employer.

Section 52. (a) For each annual inspection made under the provisions of this section, the employer shall pay, at the time of such inspection, a fee of five cents for each one thousand dollars or fraction thereof of his annual pay-roll for the preceding year; provided, that no inspection fee under this section shall be less than Five Dollars.

Minimum inspection fee.

Fees in subsequent inspections.

Section 52. (b) The fees for any subsequent or re-inspection made during any year in which an annual inspection shall have been made, shall be:

Where the annual pay-roll for the preceding year shall have been not more than Twenty-five Thousand ($25,000.00) Dollars, Five ($5.00) Dollars.

Where the annual pay-roll for the preceding year shall have been more than Twenty-five Thousand ($25,000.00) Dollars but not more than One Hundred Thousand ($100,000.00) Dollars, Ten ($10.00) Dollars.

Where the annual pay-roll for the preceding year shall have been more than One Hundred Thousand ($100,000.00)

Dollars but not more than Five Hundred Thousand ($500,000.00) Dollars, Twenty ($20.00) Dollars.

Where the annual pay-roll for the preceding year shall have been more than Five Hundred Thousand ($500,000.00) Dollars but not more than One Million ($1,000,000.00) Dollars, Forty ($40.00) Dollars.

Where the annual pay-roll for the preceding year shall have been more than One Million ($1,000,000.00) Dollars, Fifty ($50.00) Dollars.

Inspection fees and fines to be paid monthly into what fund.

Section 52. (c) All fees received by the Board for inspection, or for subsequent or re-inspection, and all fines imposed or collected for a violation of the safety provisions of this Act shall be paid monthly to the State Treasurer who shall credit such payments to the Industrial Administration Fund.

Orders concerning places and employments found to be unsafe.

Section 53. (a) Whenever the Board shall find, that any employment or place of employment is not safe, or that the practice or means or methods of operation or processes employed or used in connection therewith are unsafe, or do not afford adequate protection to the life and safety of employes in such employments and places of employment, the Board shall make and enter and serve such order relative thereto as may be necessary to render such employment or place of employment safe and protect the life and safety of employes in such employments and places of employment, and may in said order direct that such additions, repairs, improvements or changes be made; and such safety devices, and safeguards be furnished, provided and used as are reasonably required to render such employment or places of employment safe, in the manner and within the time specified in such order.

Board may grant time within which to comply with any order.

Section 53. (b) The Board may, upon application of any employer or other person affected thereby, grant such time as may reasonably be necessary for compliance with any order, and any person affected by such order may petition the Board for an extension of time, which the Board shall grant if it finds such an extension of time necessary.

Board may summarily investigate places, etc., believed to be unsafe.

Section 53. (c) Whenever the Board shall learn, or have reason to believe that any employment or place of employment is not safe or is injurious to the welfare of any employe, it may summarily investigate the same, with or without notice or hearings, and enter and serve such order as may be necessary relative thereto.

Compliance with orders, directions, rules, etc., enjoined.

Section 53. (d) Every employer, employe and other person shall obey and comply with each and every requirement of every order, decision, direction, rule or regulation made or prescribed by the Board, and shall do everything necessary or proper in order to secure compliance

with, and observance of every such order, decision, rule, or regulation.

Act not to be construed to deprive any other public corporation, board or department of any power or jurisdiction.

Effect of order in regard to rules and orders of other departments of government.

Section 53. (e) Nothing contained in this Act shall be construed to deprive any other public corporation, board or department of any power or jurisdiction over or relative to any place of employment; provided, that whenever the Board shall, by order, fix a standard of safety for employments or places of employment, such order shall, upon the filing by the Board of a copy thereof with the secretary or clerk of any such public corporation to which, or within whose jurisdiction it may apply, establish a minimum requirement concerning the matters covered by such order, and shall be construed in connection with any local order relative to the same matter and to amend or modify any requirement in such local order not up to the standard of the order of the Board.

Orders, rules, regulations, findings, etc., of Board to be admitted as evidence when.

Section 53. (f) Every order of the Board, general or special, its rules or regulations, findings or decisions shall be admissible in evidence in any prosecution for, or suit to prevent, the violation of any of the provisions of this Act, and shall be presumed to be reasonable. This presumption is, however, a rebuttable presumption.

Board may investigate cause of all industrial accidents.

Section 53. (g) The Board may investigate the cause of all industrial accidents occurring in any employment or place of employment, or directly or indirectly arising from, or connected therewith, resulting in personal injury or death; and the Board shall have the power to make such orders or recommendations with respect to such accidents as may be just and reasonable, provided that neither the order nor the recommendation of the Board, nor any accident report filed with the Board, shall be admitted as evidence in any action for damages, or any proceeding to recover compensation, based on or arising out of such injury or death.

Orders and recommendations concerning same.
Such orders and recommendations not to be used as evidence where.

When rate upon place may be advanced 50 per centum, and continued until when.

Section 53. (h) If, by reason of poor or careless management, or otherwise, any place of employment be unduly dangerous, in comparison with other like places of employment, and the employer operating the same shall not have complied with the safety provisions of this Act, and such employer shall be under Compensation Plan Number Three, the Board, in addition to any other penalty provided by this Act, shall advance the rate upon such place of employment fifty per centum, and such advanced rate shall continue and be in force until such place of employment shall have ceased to be unduly dangerous in comparison with other like places of employment, and such employer shall have obtained a certificate of the inspector or examiner provided for herein.

Violation of any safety provision or refusal to comply therewith, etc., a misdemeanor.

Section 54. Every employer, employe, or other person, who either individually or acting as an officer, agent or employe of a corporation, or other person, violates any safety provisions contained in this Act, or any part of any such provision, or who shall fail or refuse to comply with any such provision or any part thereof or who directly or indirectly, knowingly induces another so to do, is guilty of a misdemeanor.

Inspection of mines shall be made by whom.

Section 55. (a) Whenever in this Act the inspection of mines is referred to, such inspection shall be made by the Inspector of Mines, or his deputy, and nothing in this Act contained shall be construed as modifying or limiting in any way the duties required to be performed by the Inspector of Mines as may be otherwise provided by law; provided, however, that the Inspector of Mines shall collect and account for the fees herein prescribed for inspection or subsequent or re-inspection.

Fees to be collected by.

No rules, etc., relating to operation of mines, valid unless concurred in by State Mine Inspector.

No rule, regulation or requirement relating to the operation of mines within the State of Montana made by said Board shall be lawful or valid unless the same shall be concurred in and approved by the State Mine Inspector, and shall have been within the power of the said State Mine Inspector, to make in the first instance.

Orders, directions or requirements of Inspector of Mines filed with the Board to have what force.

Section 55. (b) A copy of any order, direction or requirement of the Inspector of Mines shall be filed with the Board and shall thereupon become and have all the force and effect of an order of the Board, subject only to review by the court, as in this Act provided.

Repealing clause.

Section 56. All Acts and parts of Acts in conflict herewith are hereby repealed.

Act to take effect.

Section 57. This Act shall be in full force and effect from and after its passage and approval.

Approved March 8, 1915.

CHAPTER 97.

"An Act to establish the position of Custodian of Records, Mementoes, Relics and Documents of the Department of Montana of the Grand Army of the Republic, and to provide for the preservation of the History of Citizens who served in the Army, Navy or Marine Corps of the United States during the Civil War, and to set apart a room in the State Capitol therefor, and to repeal Section 270, the Revised Codes of 1907, and Chapter 32 of the Session Laws of the Thirteenth Legislative Assembly of the State of Montana."

Be it enacted by the Legislative Assembly of the State of Montana:

Appointment of custodian of records, etc., of Grand Army of the Republic.

Section 1. The Governor of the State of Montana is hereby authorized and directed to appoint a custodian of the records, mementoes, relics, documents and archives

of the Grand Army of the Republic, and history of the residents of the State of Montana who served in the army, navy or marine corps of the United States during the civil war. The Department Commander, Department of Montana of the Grand Army of the Republic, may recommend to the Governor a suitable person to be appointed as such custodian, provided that the person appointed as such custodian must be a member of the Grand Army of the Republic of the Department of Montana.

Department commander may recommend custodian for appointment.

Must be a member of the Grand Army.

Room to be set aside for records, archives, etc., and be suitably furnished.

Section 2. The Governor and Secretary of State, are hereby authorized and directed to set apart a suitable room in the capitol building of the State of Montana, for the storing and safe keeping of such archives, records, etc., of the Grand Army of the Republic, and said room shall be suitably furnished, and shall be under the charge of the custodian so appointed.

Room to be used for what purposes.

Section 3. Said room shall be used by such custodian for the purpose of storing and exhibiting relics, mementoes, archives and documents of the Civil War, and for arranging and preserving the history of the residents of Montana who served in the army, navy or marine corps of the United States during the Civil War and any other literature which the Department of Montana of the Grand Army of the Republic may collect and desire to preserve as a part of the history of the State. Such records and exhibits shall be accessible at all times under suitable rules and regulations to all residents of this State. and other persons desirous of viewing such exhibits.

The books, records, etc., to become property of the State, when.

Section 4. All books, records, papers, relics, mementoes and histories and other effects of whatever nature applying to the Department of the Grand Army of the Republic and accorded space in this room, shall, whenever such department ceases to exist as a department of the Grand Army of the Republic, become the property of the State of Montana.

Limit to salary of custodian and expenses.

Section 5. The expense of collecting and maintaining such exhibits including the salary of the custodian herein provided shall not exceed the sum of Twelve Hundred ($1200.00) Dollars, in any one year, which shall be paid by the State Treasurer, in the same manner as other expenses and salaries of the State Departments, and employees or officers are paid.

Repealing clause.

Section 6. Section 270 Revised Codes of 1907 and Chapter 32 of the Session Laws of the Thirteenth Legislative Assembly of the State of Montana and all Acts and parts of Acts in conflict herewith are hereby repealed.

Section 7. This Act shall be in full force and effect from and after its passage and approval.

Approved March 8, 1915.